

Digitized by the Internet Archive  
in 2022 with funding from  
University of Toronto

<https://archive.org/details/31761114673684>













G-33

G-33

ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 23 October 2006

# Journal des débats (Hansard)

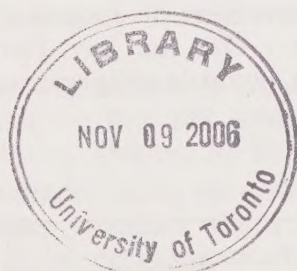
Lundi 23 octobre 2006

**Standing committee on  
general government**

Highway Traffic Amendment Act  
(Seat Belts), 2006

**Comité permanent des  
affaires gouvernementales**

Loi de 2006 modifiant le Code de  
la route (ceintures de sécurité)



Chair: Linda Jeffrey  
Clerk: Susan Sourial

Présidente : Linda Jeffrey  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)





## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 23 October 2006

Lundi 23 octobre 2006

*The committee met at 1559 in room 151.*

## SUBCOMMITTEE REPORT

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The standing committee on general government is called to order. We're here today to commence public hearings on Bill 148, An Act to amend the Highway Traffic Act respecting the use of seat belts.

Our first order of business is the adoption of the subcommittee report. Could I have somebody move and read the report, please?

**Mr. Phil McNeely (Ottawa-Orléans):** Your subcommittee on committee business met on Wednesday, October 18, 2006, and recommends the following with respect to Bill 148, An Act to amend the Highway Traffic Act respecting the use of seat belts.

(1) That the committee hold two days of public hearings in Toronto on Monday, October 23 (invitees) and Wednesday, October 25, 2006, (members of the public) from 3:30 to 6:00 p.m.

(2) That representatives from the following groups be invited to appear for 15-minute presentations on Monday, October 23, 2006: United Senior Citizens of Ontario, CAA, Ontario Provincial Police, Insurance Bureau of Canada, Ontario Motor Coach Association, Canadian Vehicle Manufacturers' Association, POINTTS, Ontario Safety League, plus possible other groups suggested by the government.

(3) That the committee clerk, with the authority of the Chair, post information regarding the committee's business on the Ontario parliamentary channel and the committee's website.

(4) That interested people who wish to be considered to make an oral presentation on Bill 148 contact the committee clerk by 4 p.m., Friday, October 20, 2006.

(5) That on Friday, October 20, 2006, the committee clerk supply the subcommittee members with a list of requests to appear received (to be sent electronically).

(6) That, if all requests cannot be scheduled, the subcommittee members shall decide whether to ask the House for additional time or whether to provide the committee clerk with a prioritized list of the names of witnesses they would like to hear from. These witnesses must be selected from the original list distributed by the committee clerk to the subcommittee members.

(7) That, if all groups can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties and no party lists/additional time will be required.

(8) That the groups and individuals be offered 15 minutes in which to make presentations.

(9) That the deadline (for administrative purposes) for filing amendments be Friday, October 27, 12 noon.

(10) That the deadline for written submissions be 12 noon, Monday, October 30, 2006.

(11) That the committee hold one day of clause-by-clause consideration on Monday, October 30, 2006 (3:30 p.m. to 6 p.m.).

(12) That the research officer provide the committee members with a final summary of the recommendations.

(13) That the research officer provide the committee members with information regarding what other provincial jurisdictions have done in respect to what is being proposed in Bill 148, as well as government and industry standards regarding seat belts. (How does industry determine the maximum load for a vehicle?)

(14) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Chair:** Any debate? All those in favour? That's carried.

HIGHWAY TRAFFIC AMENDMENT ACT  
(SEAT BELTS), 2006LOI DE 2006 MODIFIANT LE CODE DE LA  
ROUTE (CEINTURES DE SÉCURITÉ)

Consideration of Bill 148, An Act to amend the Highway Traffic Act respecting the use of seat belts /  
Projet de loi 148, Loi modifiant le Code de la route en ce qui concerne le port de la ceinture de sécurité.

## UNITED SENIOR CITIZENS OF ONTARIO

**The Chair:** Our first witness today is Marie Smith, from the United Senior Citizens of Ontario. Is she here?

Could you come forward? Welcome. Please state your name and the organization you speak for. You'll have 15 minutes to present. If you leave some time at the end, it will be distributed equally amongst all three parties to ask



questions of your deputation. When you're ready, you can begin.

**Ms. Marie Smith:** Good afternoon. I am Marie Smith, president of the United Senior Citizens of Ontario. Thank you for giving the United Senior Citizens of Ontario the opportunity to speak to the standing committee on general government concerning seat belts.

I am a retired elementary and secondary school-teacher. Approximately 80% or more of our students were bused into rural schools. We continually heard from our bus drivers that students were unruly and often out of their seats. It was a major distraction for the bus drivers to try and keep the disruptive students in their seats and operate the bus while trying to drive safely. They often complained that they had to stop the bus and deal with these students. Occasionally, teachers were asked to ride on the bus to observe the students but, of course, as you know, kids being kids, they were usually little angels when a teacher was present. This was back even before seat belts were mandatory in cars. I remember drivers saying, "I wish I could tie them in their seats so I can concentrate on the road and drive safely."

I know there are many pros and cons for seat belts in school buses and tour buses. If we go back to the reasons mandatory seat belts were put in cars, then is it not just as important to use them on our buses? Do children and people on buses have charmed lives? We are sending mixed messages to our students that you don't need to use seat belts on a bus, but when you get into a car, you need a seat belt. No wonder our students are mixed up and often defiant of the law.

Talking to a firefighter and an ambulance driver who have used the jaws of life many times, they were very disappointed that seat belts on buses weren't mandatory long ago. Two police officers were also of the same opinion, and all the parents I spoke to wanted the law to become mandatory.

School administrators said that most of their minor accidents happen because the children are up and moving around. We used to have about two a week, I would say, that were brought in with either cuts or bruises or something from moving around in the bus.

Up north, due to road conditions, buses occasionally slip off the road, causing a lot of minor injuries. All the parents I spoke to said, "Please get the government working on a seat belt law." Moose and deer are another problem in the northern area. These animals can cause serious damage to any vehicle. It was only a year or so ago that one of our police officers was killed when he hit a moose.

At the age of four years old, my grandchildren, nieces and nephews, and of course all my neighbours' children too, were able to unbuckle and buckle up as they were brought up to use car seats and buckle up before the car moved. I would like to know what makes a bus different than a car. Why does a bus driver have to wear a seat belt and no one else? This is a question I've always wondered about, why he had one on and none of the rest of us did.

According to the newspapers this week, Transportation Minister Donna Cansfield will no longer allow

people to crowd into vehicles that have too few seat belts. This legal loophole will be closed because of the horrific accident that killed four people. That was out at Caledon; I'm sure you're all aware of it. What about people on buses? Aren't they as important?

I talked to a recently retired teacher, and she told me that school bus operators were putting three small children in a seat. This is one of the reasons they didn't want the seat belt law. Three children should not be put into a seat where there is only room for two seat belts. If it's not going to be legal in a vehicle such as a car, then why should it be legal on a bus?

I know it is going to take time to retrofit all buses, but it can be implemented, as you did with cars, over a five-year period, or however long you think it would take. All new buses can be outfitted in the factory. In fact, I think buses have a lifetime that they can be on the road, and then they must be taken off and another bus put on.

Yes, it is going to cost us money, but even if one child's life is saved, isn't it worth it? Children are our future generation and need our protection. Children aren't careless, they are just carefree.

One gentleman I was talking to stated that there is a company that can make seat belts that can be released from one button at the front of the bus, or wherever the best position is. Of course, that is something that would have to be decided by the companies, and it would only be in case of an accident.

I know that you're very aware of how many seniors today travel by bus. They are the backbone of our country and have worked very hard to bring Ontario to the prosperous province that we have today. Let's keep our seniors safe also.

In many European countries, seat belts in buses are mandatory. They did a lot of study before they implemented their laws, and I know you will do the same.

United Senior Citizens of Ontario are depending on all governments, provincial and federal, to change the seat belt law on buses to protect our most precious assets: our children, seniors and the people of Ontario.

**1610**

Please give careful consideration to all aspects of Bill 148. Remember, if we save one life, we have succeeded in doing what is best for Ontarians. I haven't been able to find out if other provinces have seat belt laws, but it would be great if Ontario took the lead and set an example for Canada.

Thank you for giving the United Senior Citizens of Ontario the opportunity to speak on Bill 148.

**The Chair:** Thank you. You've left about three minutes for each party to ask questions, beginning with Mr. O'Toole.

**Mr. John O'Toole (Durham):** Thank you very much, Marie, for taking the time to come forward in your volunteer capacity as the president of the United Senior Citizens of Ontario. I commend you for bringing a voice—an active voice, I might say—to issues.

I should put on the record that earlier this year, in September, I met with two very strong, very qualified



advocates on this issue, Sam Wolerstein and Ray Sawowsky, who were standing in your stead, as I'm the critic for the opposition on transportation issues. They brought forward very much the same argument you've brought forward on the importance of considering the expansion of a seat belt application to school buses as well as motor coaches. As a result, you're here, as well as other stakeholders, who will probably be bringing forward contradictory arguments legitimizing that maybe they shouldn't have them in school buses and areas like that.

You mentioned that they are in force in Europe. I think that we are always looking to best practices. If you could put on the record what jurisdictions in Europe—or I could ask our legislative research to look into specific countries.

**Ms. Smith:** I would ask them to look into it, please. I was told it was England and I believe the other one was Switzerland, but there may be a lot more than that. I didn't go on the Internet to find that.

**Mr. O'Toole:** One of my daughters is married and lives and teaches in England, so I guess I could call and ask her. But I'd like to put on the record as a formal research question as to what jurisdictions, in either North America or Europe, this comes into play, because it is something that I'm sure the government wants to get correct and get right. I think we're pretty well in agreement, and I can only speak for John Tory and the opposition party. Bill Davis was the founder, and Ontario was the first jurisdiction in the world that had mandatory seat belt legislation some 30 years ago. That was just celebrated.

In fairness, you should be aware as well that this unfortunate incident—I'm sure we all express our sympathy for the four people and the families who were affected by the event that transpired on October 14 in Caledon—

**The Chair:** Mr. O'Toole, you have about 30 seconds.

**Mr. O'Toole:** I just want to put on the record that there was a correspondence from the president of the Canada Safety Council, Emile Therien, to Dalton McGuinty, the Premier, and the minister, dated November 15, 2005, almost two years ago, pointing out exactly this exemption provision that allowed this to happen. I just want to put that on the record. That's why they were able to draft this bill rather hastily, because they were already aware of the exemption and the risk it posed for people in Ontario.

**The Chair:** Thank you, Mr. O'Toole. Mr. Tabuns.

**Mr. Peter Tabuns (Toronto–Danforth):** Ms. Smith, thanks for taking the time to come down to see us today. I think Mr. O'Toole has asked the questions around bus seat belts that I would have asked.

The intent of the bill as written is to require there to be a seat belt for every person in the vehicle. Is that one that your organization is in support of as well?

**Ms. Smith:** Yes, we are.

**Mr. Tabuns:** Do you think that drivers should be responsible for ensuring that everyone is wearing their seat belt?

**Ms. Smith:** I think that is a question I would leave up to the administration of the schools. They used to bring the students in if they wouldn't do what they were told, and then they were not allowed to ride on the buses. So now it will be up to them to make that decision.

**The Chair:** Mr. Lalonde.

**Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell):** Thank you very much for your presentation, and also for the fact that you are concerned about the future of our kids.

Two points: I believe Minister Cansfield mentioned that it would probably be too early to look at school buses at the present time. We want to act immediately on vans, on the number of passengers in little vans. But I believe the concern at the present time is not the fact of how much it would cost to add up the seat belts in the buses, because it's true that with kids of four or five years old they do have three per seat. It is the cost, I believe—have you investigated that?—of having adults in the school buses to undo the seat belts when it's time for them to get out of the bus.

**Ms. Smith:** No, I haven't looked at that, but most children are quite able to undo their own at four years of age, because they're quite used to it in their own cars at home. But I haven't looked into the cost of having somebody on a bus, no.

**Mr. Lalonde:** That was my question.

**The Chair:** Thank you very much for being here today. We appreciate your coming today to delegate.

#### CANADIAN AUTOMOBILE ASSOCIATION OF ONTARIO

**The Chair:** Our next delegation is the Canadian Automobile Association of Ontario. Kris Barnier?

I believe we have your presentation here in front of us. Thank you for coming today. You'll have 15 minutes. Should you leave time at the end, there will be an opportunity for everybody to ask you a question. If you could state your name and the organization just before you begin, for Hansard—whenever you're ready.

**Mr. Kris Barnier:** Thank you, Madam Chair. My name is Kris Barnier and I'm the provincial affairs specialist with CAA Ontario. Collectively, we represent three CAA member clubs and have about 2.2 million members in the province.

I'd like to start by thanking the committee for the opportunity to present here today. I'd also like to congratulate and commend Minister Cansfield for taking action on this legislation. I think what also needs to be done is that the committee and all parties need to be commended for their collective efforts to get this legislation through.

Ontario has the safest roads in North America. That's something that we should all take a lot of pride in. I think we have those safest roads for a number of reasons. It's because of the actions of successive governments and because of stakeholders to do things like implement and strengthen graduated licensing systems, something like



Mr. Flynn's bill proposes to do and Mr. O'Toole's bill proposes to do; things like increasing penalties for speeders and aggressive drivers; increased social marketing campaigns designed to curb not only impaired drivers but drivers who are now using other substances and whatnot. But we've also had a lot of impact on that social marketing side on seat belts. We are making a lot of progress, but clearly there is more that we can do.

Like on many different issues that relate to road safety, I think it's fair to say that CAA has been a leader on the seat belt issue. In fact, CAA was one of the leading organizations, if not the leading organization, that pushed for seat belt legislation that resulted in Ontario becoming the first jurisdiction in North America to have seat belt legislation. In fact, in 1962, prior to that, motorists didn't use seat belts. They didn't have them. That's because cars didn't come equipped with seat belts. CAA Ontario, when we were formerly known as the Ontario Motor League, provided seat belts to our members and made sure that they met with Canadian safety association standards. Years later—well, actually not that much later—in 1963, we went to Queen's Park and were able to get a resolution that prohibited auto dealers from selling seat belts in cars that weren't meeting specific safety standards. We went so far as to actually sit down and work with the auto manufacturers to make sure that they were providing properly workable seat belts.

As mentioned, with our persistence through the 1970s, we were able to get seat belt legislation here in the province of Ontario. It's great that Ontario is a leader on this issue.

Most recently, one of the things that we were very happy to see is that new booster seat legislation. We definitely think that that was a step in the right direction and we were pleased to again work with the government to communicate that message to our members through our electronic communications with members and through our website.

Today, we continue our role on the seat belt issue. We partner with police forces across Ontario and we provide rollover vehicles. What these vehicles demonstrate is—basically they put a vehicle on the back of a mount and the vehicle spins around, and it simulates the impact of a rollover accident. You can see the dummies in the vehicle being thrown around. It creates a very scary, very real image of the sort of impact that not wearing a seat belt can have.

Now, while Ontario should take a lot of pride in knowing that we have the safest roads in North America, clearly there's more that we can continue to do. According to the latest released Ontario Road Safety Annual Report, in 2004, 799 people died on Ontario's roads, 3,565 suffered major injuries and just shy of 30,000 people suffered minor injuries. Of those, nine fatalities and 96 seriously injured were children under the age of 9.

1620

We also know that unbelted drivers involved in fatal or personal injury collisions are 34 times more likely to be killed and 10 times more likely to be seriously injured than belted drivers.

While it seems like we're making great progress, for some reason there are still, according to the Ontario Ministry of Transportation, about 680,000 Ontarians who don't regularly wear their seat belts. The study also notes that roughly one third of all drivers and passengers killed in motor collisions were not wearing their seat belts at the time of collision, so if you do the math on that one, 266 motorists died not wearing their seat belts, and based on the other numbers, probably as many as 250 of those deaths could have been prevented. Again, while we have seen a lot of improvements, with more people wearing seat belts over the last few years, we think these numbers are still alarmingly high.

When we have 800 people being killed on our roads each year, it means that we still have more work to do. We have to remember that those people are people's children, parents, friends, hockey coaches and whatnot, and we have to remember that any death of any kind is always tragic in the lives of people who have lost loved ones. That's why we have to take this issue very seriously, and that's why we're very glad to see the government taking action on this issue. It's showing that it does believe that this is a serious issue that does warrant immediate attention.

We believe that this new legislation, coupled with public education and enforcement efforts and other efforts, will go a long way toward preventing injuries and, hopefully, unnecessary deaths.

It's clear that police blitzes do make a difference, and CAA commends all the police forces who do get involved in those sorts of things, as we commend all the stakeholders who do get involved in sending out the message that we have to get more people to wear seat belts regularly.

We're pleased to support this legislation as a positive step in absolutely the right direction. Again, we do commend Minister Cansfield for introducing this legislation, as we commend all members of the Legislature who are helping to move this issue along quickly.

While we think that the legislation provides a solid basis for improvement, there are a few points that we think could be implemented that would strengthen the bill and some other issues that we think should be raised for further study.

First, we strongly recommend that the legislation be clear in prohibiting passengers from travelling in the backs of pickup trucks, in the bed portion. Passengers travelling in that section of the vehicle are at an even greater risk of being thrown from the vehicle or being seriously hurt or killed.

On a personal note, when I was university, I got a call from my parents to tell me that my brother had been involved in a very serious car accident because he was an unrestrained passenger riding in the back of a pickup truck. That pickup truck was travelling at an exceptionally high rate of speed when the driver lost control and slammed into a light standard. My brother spent a lot of time in the hospital and had a lot of pain for a long period of time. What he's still going through has a serious impact on what he's able to do for a living and what-



not. When you get a call from your parents, absolutely horrified, telling you that they had to look at your little brother being strapped down to a spinal board and being taken into the back of an ambulance—that's a pretty horrifying thing for a parent, and even to hear it as a brother on the other end of the phone is a pretty awful thing. For me, it's exceptionally clear why the legislation has to be clear on not letting people ride in the backs of pickup trucks while not wearing seat belts.

A couple of other things that we had—and I'll blend these two, because they are very similar and on the same front. One part of the legislation notes that sometimes there are going to be drivers who are driving at about 40 kilometres an hour or under or they'll be getting in and out of their vehicles frequently, and the legislation, I think, as it currently exists and will exist in the future, has some provisions that let people continue to not wear seat belts. While there are certain times when it may sound like it's going to make sense to have those sorts of provisions, we'd encourage the government to take a serious look at those provisions that allow people to not wear a seat belt and maybe reconsider its position on those things.

Along the same notes, again, there are a number of exemptions in the legislation and a lot of regulatory powers there to exempt people on the basis of medical issues or on the basis of what they do for a living. Before the government moves forward with any significant changes in that regard, we strongly encourage it to go out and consult, do its homework, and make sure it's coming up with the right things, because we all know that you don't need to be going at over 40 kilometres an hour to have a seat belt be enough to save your life in an accident. You never know what sort of speed other vehicles are going to be travelling when you're into that kind of a collision. So for that reason, again, we do encourage a lot more study and a lot more work in terms of future exemptions and in terms of who this would apply to.

With that, I'm going to close, and I thank the committee for the opportunity to present today. I'll turn it back over to the Chair and be happy to answer any questions.

**The Chair:** You've left a little less than two minutes for each party, beginning with Mr. Tabuns.

**Mr. Tabuns:** Thanks for your presentation, Mr. Barnier. Our previous deputants suggested requiring seat belts in school and tour buses. Does your organization have a position on that, a particular recommendation?

**Mr. Barnier:** Specific to seat belts, no, we don't, but what I can tell you is that we have a number of programs that, when we put patrollers in the backs of school buses, they do a great job in terms of ensuring safety there. Certainly, it would be an issue where there would be a lot of value in further study, considering the difference in how seat belts are designed, the size of children and whatnot. I think there are conflicting arguments on that.

**Mr. McNeely:** I'd just like to thank you very much for coming in today and supporting the legislation. The minister's aware of the issue around pickup trucks and

that it is a serious one. There will be consultation with the farming community, I believe. It's a big issue, and we want to make sure that we get it right on that. So we realize that that is an issue. Again, thanks for the support on the legislation.

**The Chair:** Mr. O'Toole.

**Mr. O'Toole:** Thank you very much, Kris, for your ongoing commentary with respect to issues involving the Ministry of Transportation. It's quite useful to have a professional group. Your personal experience and your comments are valuable, and we do listen. I know, on a lighter-hearted note, that Mr. Flynn listens to you as well.

Anyway, Mr. Tabuns has asked the appropriate questions, because the stakeholder issue is the expansion of that "one seat belt, one passenger" sort of rule. There's a lot of implementation, and you've answered that question on a personal level.

The other one I've heard from is Vintage Vehicles. These are the collector people. They're quite concerned. What's your position on that?

**Mr. Barnier:** I know that is another important issue. You do have collectors who, for the sake of the integrity of their vehicle, might have the original lap belt or no belt at all. Our thought is, we respect where they're coming from, but for the sake of saving people's lives and preventing injuries, we would support the retrofit.

**Mr. O'Toole:** Would you make it mandatory, is the question.

**Mr. Barnier:** Yes.

**Mr. O'Toole:** You would?

**Mr. Barnier:** Yes.

**Mr. O'Toole:** I'll make sure I send them a copy of that, because I don't think some of them believe that's your position. They're very opposed to it, quite frankly.

There are some other issues that have come to my attention, not from a formal organization. This past week, I was at a celebration of the end of the apple harvest. In the horticultural business, they use a lot of migrant workers who are being moved from location to location, often in the back of a truck, often under 40 miles, often between fields. You're quite adamant that you would require everyone—they'd have to make 19 trips with the pickup truck. You know what I mean? There's some practical commentary that's necessary here.

**The Chair:** Thank you, Mr. O'Toole.

**Mr. O'Toole:** Everyone wants to be safe, but we should be also watching out for the environment, you know?

**Mr. Barnier:** Sir, I'd be happy to follow up with you on that.

**Mr. O'Toole:** Thanks for giving me an extra 14 seconds, Chair.

**The Chair:** Just for you, Mr. O'Toole.

Thank you very much for coming today.

Mr. O'Toole, you're one of the first people who notice when we go over time. So I'm really trying to follow the rules you set for me. Thank you so much.



## INSURANCE BUREAU OF CANADA

**The Chair:** Our next deputant is the Insurance Bureau of Canada, Mr. Yakabuski. Welcome. As you get yourself settled, I'm sure you've heard my spiel at the beginning. You have 15 minutes. If you leave some time at the end, there will be an opportunity for everybody to ask you questions. We do have your presentation in front of us so that we'll be able to follow along with what you speak about today. Thank you for coming.

**Mr. Mark Yakabuski:** Thank you very much, Madam Chair. It is a delight for me to come before this committee this afternoon to discuss what in my opinion is a very, very important matter. The recent tragedy near Caledon highlights the need to strengthen Ontario's current seat belt legislation. The most pressing matter is to ensure that it will no longer be possible in Ontario to have more passengers than the number of seat belts in a vehicle.

The Insurance Bureau of Canada is the national industry association representing Canada's home, car and business insurers. We are very proud to have been one of the earliest proponents and supporters of mandatory seat belt legislation when it was introduced into Ontario 30 years ago. Ontario was at that time leading all jurisdictions in North America with the introduction of seat belt laws.

The current amendment that you are considering in Bill 148 is overdue. As you know, there is already a restriction imposed on novice drivers in Ontario through the graduated licensing program, so what you are discussing today is not entirely new to the province of Ontario. You will not be surprised to know that, again, the Insurance Bureau of Canada was the very first stakeholder in Canada to advocate a graduated licensing program for new drivers.

Part of our original proposal with respect to graduated licensing was that there could be no more passengers in a car than the number of seat belts. Once again, Ontario was the leading Canadian jurisdiction in April 1994 when the new graduated licensing scheme was first introduced, and it made seat belt restriction a key component of that safety initiative. Since that time, each year we have had the pleasure at IBC of working with police forces and the Ministry of Transportation to promote the use of seat belts in order to reach the highest possible usage levels. Today—and you've heard this before, but it deserves repeating—over 92% of Ontarians use their seat belts, an impressive statistic which we can all be proud of, but one which still leaves some room for improvement.

Then, as today, we knew that seat belts reduce injury levels and, most importantly, save lives. The facts are simply undeniable. Approximately 30% of fatally injured drivers and passengers in Canada were not wearing their seat belts. Unbelted passengers are 14 times more likely to be killed and eight times more likely to be hospitalized for their injuries. Indeed, between 1989 and 1995 alone, Transport Canada estimated that 6,200 lives had been

saved and 120,000 injuries prevented as a result of the use of seat belts.

Change is always challenging. Thirty years ago, we were facing the challenge of introducing more than just a law; we were facing the challenge of changing people's behaviour. Today, we are facing exactly the same challenge, and we must respond to it, reminded as we are by the terrible tragedy that happened outside of Caledon not that many days ago.

I remind you of a study that was published in 2002 in the renowned medical journal *The Lancet* which confirms that the step that you are considering today is vital to saving more lives. Its research showed that a rear seat passenger who does not have their seat belt attached becomes a dangerous flying object in the case of a collision and increases the risk of death for those occupants in the front seat who have their seat belts on by five times. Moreover, the same study demonstrated that 80% of fatalities of front-belted occupants would have been avoided.

Madam Chair, as you can see from my brief remarks today, the Insurance Bureau of Canada strongly endorses Bill 148 and its amendments to the Highway Traffic Act. This bill will assuredly save lives on Ontario's roads, and I urge the Legislature to pass it as quickly as possible.

Thank you for your time today. I would be happy to answer any questions you may have.

**The Chair:** Thank you. You've left just over three minutes for each party to ask a question, beginning with Mr. Lalonde.

**Mr. Lalonde:** Thank you very much, Mr. Yakabuski, for your presentation. I know you are a strong believer in safety. I've known you for quite a few years. We appreciate the fact that you're supporting the minister's role in this issue.

As I mentioned to a previous presenter, Minister Cansfield will do some consultation on school buses. This is why at the present time it doesn't include school buses. To your knowledge, being an advocate in safety, do you feel that we should proceed immediately with the school bus seat belts?

**Mr. Yakabuski:** No, I do not believe that you should proceed immediately in requiring seat belts in school buses. I also happen to be the vice-chair of the Canada Safety Council, and we have looked at this issue thoroughly for many years, because it has been on the safety agenda for a good period of time. All of the research that we have been able to amass, both here in Canada and abroad, suggests that the construction of school buses is substantially different from that of other vehicles and that they are indeed constructed to be able to allow for more free movement in the case of an impact or a rollover or something of the sort. So I think we need to be very, very careful in perhaps moving too quickly to require that all vehicles have seat belts of this sort, because school buses are of a very particular design.

**Mr. Lalonde:** Thank you very much.

**The Chair:** Mr. Ouellette.

**Mr. Jerry J. Ouellette (Oshawa):** I would expect stats very similar, just to continue on that talk about



school buses. Statistically speaking, in the past they were 10 times safer than other vehicles on the road. I think that's one of the key reasons, which needs to be brought up, which I haven't heard at this committee.

I'm quite surprised that in the wording of the legislation it doesn't address some key issues as relates to the HTA and regulation 411, as I understand it.

Under subsection 106(1), it specifically states, "at the time that the vehicle was manufactured." I'll go on and get to the point and you'll understand it very clearly, I hope. Subsection (2) deals with every person in a vehicle "in which a seat belt assembly is provided." And then if you go down to 4(a)(i), it specifically states, "occupies a seating position for which a seat belt assembly has been provided."

Part of the problem is that in the Highway Traffic Act, it specifically states that you have to have a seat belt required at the time of manufacture. Transport trucks typically are ordered with one seat in them. They only carry one: the driver's seat. Passenger seats are added afterwards. There is no requirement to have that seat belt, or that seat belt put in afterwards. Don't you think that this legislation should reflect the requirement to retrofit or upgrade any additional seats after manufacture to ensure that those new vehicles that are coming along are addressed as well?

**Mr. Yakabuski:** There's absolutely no doubt that people have to be belted. There should be virtually no exceptions to that whatsoever. That has proven to be the case in vehicles that are designed to have seat belts, and we should permit as few exceptions as possible.

**Mr. Ouellette:** Lastly, time permitting, Madam Chair, the analysis of the statute brought forward, I think, statistically speaking, that the number one injury that occurred—and this is going to be a little bit facetious, and we'll take you on along this line. The number one injury that occurs that causes death is head injuries. Where is the next step you're going with? Are we going to have to wear helmets inside cars?

**Mr. Yakabuski:** I guess that's partly what some of our bag technology is all about. Airbags have been a tremendous safety addition to cars and vehicles and have saved many, many lives over the past bit.

One of the things that we did a couple of years ago at the Insurance Bureau of Canada was mount a national campaign to ensure that people adjusted their headrests appropriately. There are needless injuries to the head and to neck muscles and so on because people don't pay attention to the height of their headrest. It should be adjusted to the driver's own particular situation. Again, many, many injuries could be avoided if people paid closer attention to that. So that is something that we would strongly encourage as well.

**Mr. Ouellette:** Thanks very much for your presentation.

**Mr. Yakabuski:** My pleasure.

1640

**The Chair:** Mr. Tabuns.

**Mr. Tabuns:** Thanks for the presentation. An earlier speaker suggested that people not be allowed to ride in

the cargo area of pickup trucks. Does your organization have a position on that?

**Mr. Yakabuski:** We don't have a formal position. You always have to be a bit careful. There may well be circumstances where this is unavoidable, and I do think of some of our agricultural industries and such. It is hard to legislate good common sense, but it's a fundamental ingredient of life, as we know. So I think we have to restrict the opportunities where that might be permitted, but practically speaking we can't discount them either.

**The Chair:** Thank you very much for being here today.

#### POLICE ASSOCIATION OF ONTARIO

**The Chair:** Our next delegation is the Police Association of Ontario.

Welcome, Mr. Miller. After you get yourself settled, you will have 15 minutes. If you could identify yourself and the organization you speak for prior to speaking, you will have 15 minutes. If you leave time at the end of your presentation, which we have in front of us, we will be able to ask you questions. Whenever you're ready.

**Mr. Bruce Miller:** Thank you very much. My name is Bruce Miller, and I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line police officer for over 20 years prior to taking on my current responsibilities.

We'd like to thank you for the opportunity to appear before you today and we appreciate the chance to provide input into this important process.

The Police Association of Ontario is a professional organization representing over 30,000 police and civilian members from every municipal police association and the Ontario Provincial Police Association. The PAO is committed to promoting the interests of front-line police personnel, to upholding the honour of the police profession, and to elevating the standards of Ontario's police services. We have included further information on our organization in our brief.

We are here today to speak in support of Bill 148. We think that everybody realizes that seat belts save lives. One seat belt for every passenger makes sense and will help to prevent needless injuries and deaths.

As you know, Ontario was the first jurisdiction to introduce mandatory seat belt usage in North America in 1976, and in 1982 it was one of the first provinces in Canada to legally require the use of child car seats in motor vehicles.

I'd just like to bring your attention to some interesting facts:

In 2003, Transport Canada reported that, since 1989, increased use of seat belts in Canada has resulted in an estimated 6,200 lives saved, prevented 120,000 injuries and resulted in savings of \$9.6 billion in social and health care costs.

Child and Family Canada reported that seat belt use reduces the likelihood of deaths and injuries by 55%.



Transport Canada claims that for every 1% increase in seat belt use, five lives are saved.

Finally, the Infant and Toddler Safety Association claims that a correctly used child safety seat can reduce the likelihood of death or serious injury by as much as 75%.

According to Transport Canada, approximately 92% of Ontarians are buckling up. Failure to wear a seat belt has deadly consequences. The 2004 Ontario Road Safety Annual Report stated that approximately one third of fatally injured drivers and passengers were not wearing seat belts. Overall, unbelted vehicle occupants involved in fatal or personal injury collisions are more than 24 times likely to be killed than belted drivers.

On a personal note, I don't need statistics to understand the needless loss of life and injury that can be prevented by wearing a seat belt. I saw it first-hand far too often as a police officer. I think every police officer has certain calls in their career that they would like to forget, but can't. For me, it was responding to a serious car accident early in my career. There was a young boy trapped in one of those cars, and he died in my arms.

Far too often police officers see the tragic loss resulting from failing to wear a seat belt or not having them available for the occupants. Unfortunately, staffing levels and resources do not allow police services to do the amount of enforcement that they would like to in this area. We hope that this legislation will also help to create awareness of the need for wearing seat belts.

In closing, we'd like to thank all the members of the Legislature for their support for the principles in Bill 148. We believe that the legislation will help to save lives and would urge its speedy passage. We'd like to thank the members of the standing committee for the opportunity to appear before you once again and for your continued support for safe communities. We'd be pleased to answer any questions that you may have. Thank you.

**The Chair:** You've left about three and a half minutes for each party to ask a question, beginning with Mr. O'Toole.

**Mr. O'Toole:** Thank you very much, Mr. Miller, for your presentation and consistent reporting of statistics and their importance. Just to be on the record clearly, John Tory and the opposition caucus are clearly in support of this legislation.

There are these nagging questions at the time you open up any legislative vehicle. You look at the four areas that basically I've heard from: school bus, motor coach, farm vehicles and vintage vehicles. Do you have any strong positions, specifically on the vintage vehicle one? Because I think that's the one that's less clear, whether they should be mandatorily retrofitted. They're becoming very popular. There are organizations all across the province on—historic vehicles, and there's an argument on authenticity. Do you have any view on making it mandatory for vintage vehicles?

**Mr. Miller:** First of all, I know there are some issues that have come up. I just heard the discussions on school

buses. But I think that needs to be part of a more lengthy consultation process, looking at the ramifications involved. The one great thing about this legislation—we really do appreciate the fact that all parties, as we understand it, have spoken in favour of the principles in the Legislature—is that it's got an important educational value to the public. We need to get the message out that everybody should be wearing a seat belt.

Some of those more complicated questions I think are something that need to be studied, but it's important, having said that, that this legislation move forward, and then we take a look at those other areas.

**Mr. O'Toole:** Including the vintage vehicles—

**The Chair:** Mr. O'Toole, can you just speak a little closer into the microphone? They can't hear your questions.

**Mr. O'Toole:** That's fine. Thank you very much for your time.

**The Chair:** No, I'm not trying to stop you. I'm just saying they can't hear your questions.

**Mr. O'Toole:** I understood his generalized response.

**The Chair:** Mr. Tabuns.

**Mr. Tabuns:** Thank you very much for coming and making a presentation. Are there any changes or additions to what we've been presented with that you think should be addressed in this legislation?

**Mr. Miller:** Certainly, our organization is happy with what's been covered off in the legislation. We'd certainly like to see proclamation of subsection (2) moved forward quickly after the bill receives royal assent. But in terms of the legislation, it's been reviewed by our membership and we've had no concerns raised about it other than general support for the bill.

**Mr. Tabuns:** Okay, thank you.

**Mr. McNeely:** I have no questions.

**The Chair:** Does anybody else? Mr. Lalonde.

**Mr. Lalonde:** Yes, one brief question. I know in cars at the present time the back seat only has three seat belts. I've never done any research, but there are times when people have four children, and they're over 80 pounds, so they don't fit in a booster seat. Is it possible that the seat belt could be added to the car after it's built? Have you ever gone through this experience before?

**Mr. Miller:** No. Not having the technical knowledge, I don't think I can answer that question.

**Mr. Lalonde:** That was a question I had, even last week again. The booster seats are for 40 to 80 pounds, but there are people at, say, 85 or 90 pounds, and you could sit four in the back. Even four adults are sitting in the back seat sometimes. We've seen that with taxi drivers here sometimes. They're not allowed to do that, but they are doing it.

**The Chair:** Any other questions? Seeing none, thank you very much for being here today. We appreciate your delegation.

**Mr. Miller:** Thank you. Congratulations on moving forward so quickly today, compared to my last couple of appearances here.

**The Chair:** Thank you very much.



1650

## ONTARIO MOTOR COACH ASSOCIATION

**The Chair:** Our next delegation is the Ontario Motor Coach Association. Are they here?

Welcome. Come on forward. Mr. Crow, make yourself at home there. As you settle yourself, if you need to pour yourself a glass of water. If you have a handout, you can give it to the clerk. Do you have anything to hand out for us today?

**Mr. Brian Crow:** I don't have a handout.

**The Chair:** All right. You'll have 15 minutes, and if you leave time at the end, there will be an opportunity for us to ask questions. If you could introduce yourself and the organization you speak for. After you begin, you'll have 15 minutes.

**Mr. Crow:** Thank you, Madam Chair. I'm Brian Crow, president of the Ontario Motor Coach Association. We understand that the proposed changes you're dealing with to the HTA will not include buses and motor coaches. There have been some media reports about seat belts on motor coaches, and we thought we would take this opportunity to leave you with some information.

As noted in section 106 of the Highway Traffic Act, the federal government, through the Canadian Motor Vehicle Safety Act, determines which classes of motor vehicles require occupant restraints or seat belts. Motor coaches, school buses, transit buses, streetcars, subways, inner-city rail, and GO Transit trains are not required to have seat belts.

Federal vehicle manufacturing laws in both Canada and the United States do not require our coaches to have seat belts. This is because government studies in crash testing have determined that coach passengers are afforded an effective level of protection and are adequately restrained in most crash scenarios through a passive restraint system called "compartmentalization."

Instead of belts, motor coach passengers are passively restrained in most crash sites by closely spaced, high-backed, energy-absorbing seating and soft-covered interior elements. The seats are actually manufactured to absorb the shock. In fact, government regulators and road safety researchers in Canada and the US have concluded that seat belts may pose additional hazards to motor coach passengers as they would interfere with this proven-effective passenger protection system.

In the most common form of motor coach crash—the head-on or the side-swipe crash—passengers remain in the seated position, striking the energy-absorbing seat ahead of them. This spreads the force of the crash over the entire upper body, something that a seat belt alone could not accomplish. In addition, motor coaches, by virtue of their size, weight and impact-absorbing monocoque construction, are subject to much lower G-forces in a crash than an automobile. Government has concluded that seat belts could actually diminish the existing passenger protection by being a potential cause of injury in a severe impact, for which the present passive passenger protection was designed and is effective.

Bus travel is the safest form of passenger transportation, and OMCA will support any government measure to increase safety, including the amendments you're addressing today. As such, we are not opposed in principle to seat belts on coaches. However, we would only support a requirement for bus passengers to wear seat belts if Transport Canada determines through studies and crash testing that the overall passenger safety would be enhanced and not diminished by seat belts.

Thank you, Madam Chair. That's a little less than 15 minutes.

**The Chair:** Well, yes. That's really short. Almost four minutes for every party to ask a question, beginning with Mr. Tabuns.

**Mr. Tabuns:** I wanted to say thank you, first of all, for coming and making the presentation. Do you have any commentary on the bill as written? Do you support the proposal from the government?

**Mr. Crow:** Yes, we do. Vans that carry too many passengers, more than they have seat belts for, are not built like a motor coach or a bus, and we believe they should have a seat belt for each passenger.

**Mr. Tabuns:** Thank you.

**The Chair:** The government side, Mr. McNeely.

**Mr. McNeely:** Thank you again for your presentation. I think this is our position: that Transport Canada is looking at the issue of tour buses generally, the seat belts on them. So that is not being addressed in this legislation because it is being addressed nationally and internationally and, to date, there's no direction from Transport Canada that we should go in the direction of seat belts.

**Mr. Crow:** We understand that, and maybe I should say that we understand the public perception. As soon as we can learn to speak, we are told that we should be in a seat belt, a car seat or baby seat. There is a public perception that if they're good enough for cars, maybe there is an advantage for them in buses. We'd like to take this opportunity to say that there are differences. There are differences between a ferry, for example, and a train, where we don't require seat belts. So we'd just like to take this opportunity to keep that message in front of people, that if there are going to be seat belts, let's do it for the right reasons, not for perception.

**Mr. McNeely:** No further questions.

**The Chair:** Mr. Ouellette?

**Mr. Ouellette:** Mr. O'Toole can go first.

**Mr. O'Toole:** Thank you very much. My pleasure, Mr. Crow, to meet you, as the transportation critic. The issue has been brought up a number of times and I feel it's only my duty, not necessarily my own opinion—I met with the United Senior Citizens today. They have a campaign on that. It's their formal position. They have written to the Premier, as well as our leader John Tory and others to stake out that position as sort of—

**The Chair:** Mr. O'Toole, could I ask you again just to move to the microphone, please?

**Mr. O'Toole:** Yes. It's important to make sure that your industry responds accordingly. I appreciate your input today, as well as the assumption that the federal



government defines the vehicles that require it, whether it's a bus or an airplane or whatever.

I'm just going to put on the record the report of the August 3 incident on Dixie Road, where people were injured and there was an inquest. Also, in October 2002, in Saint John, there was an expert witness called. Emile Therrien, head of the Canada Safety Council, says, "Seat belts should be mandatory on tour buses." He stopped short of demanding they be installed in school buses. You're aware of that report, I'm sure.

**Mr. Crow:** I'm not familiar in detail with it—

**Mr. O'Toole:** Well, I'm quoting here for you. That's not my opinion; I have a different job than you. It's October 2, and this is from Saint John; the inquest was held there. This was reported by the CBC, and I'm surprised Emile Therrien said that, but that's what he said. I'll repeat it here. He's the head of the Canada Safety Council. He says, "Seat belts should be mandatory on tour buses." He stopped short of demanding them on school buses.

This has been brought up as a petition, as well, in the Legislature by Mario Sergio, petitioning the government to make them mandatory. The sessional paper, piece 95, responds that they are not supportive. That's the provincial government's position. We're discussing seat belts, and it's in that context only that your expert opinion here today is important. You feel the industry is adequately protected today because of design and other kinds of integrity?

**Mr. Crow:** With all due respect to Mr. Therrien, we don't base our position on an opinion. We base it on some engineering, some Transport Canada studies, statistics and everything else. That's what we base our opinion on: those studies, and research. If he has that opinion, that's entirely up to him. I respect his opinion but I disagree, based on the information that we have in front of us.

I reiterate a sentence in my last paragraph: that if those studies show that seat belts have a net benefit, we want them. But we are not convinced yet that there's a net benefit, based on the studies and on what the government's positions have been in the past.

**Mr. O'Toole:** I would encourage you to have correspondence with the United Senior Citizens. I'm happy to meet you afterwards to give you contacts. As politicians, we're really the conduit between those who are in the industry—yourself—and the science that you've just disclosed, as well as those who are advocating based on some opinion in an inquest or whatever.

**Mr. Crow:** I think we have a meeting in a few days. I'll get that information from you then.

**Mr. O'Toole:** Great. Thank you very much.

**The Chair:** Mr. Ouellette, you have about 30 seconds.

**Mr. Ouellette:** No, that's fine, then. Thank you.

**The Chair:** Thank you very much for being here today.

**Mr. Crow:** You're welcome. Thank you for your time.

## ONTARIO PROVINCIAL POLICE

**The Chair:** The next delegation is the Ontario Provincial Police. Good afternoon and welcome. As you get yourself settled, you'll have 15 minutes to do your presentation. If you could state your name and the organization you speak for so that Hansard has the record. If you leave time at the end, there'll be an opportunity for us to ask questions.

**Mr. Brent Mikstas:** Thank you, Madam Chair, committee members. My name is Brent Mikstas. I'm an inspector with the Ontario Provincial Police. I've been with the OPP for over 31 years, the last 19 of which I've spent as a commander—it's now referred to as the east area command—for all the provincial highways in Toronto, Durham and Peel regions. Presently, I'm acting superintendent up at the Aurora headquarters for the highway safety division.

1700

The OPP applauds the government for bringing forward a bill intended to strengthen current seat belt legislation. The OPP believes "one person, one seat belt" legislation will improve road safety in Ontario. Enhancing road safety is a key policing priority for the Ontario Provincial Police.

In spite of a reported 90% plus Ontario seat belt compliance rate in urban areas, the OPP laid 35,418 seat belt charges in 2005. In 2004, the Ministry of Transportation reported that there were 55,758 seat belt convictions provincially. Recorded convictions are kept by the MTO for driver violations only, not passengers'.

Seat belts help keep all vehicle occupants safe. The Lancet journal in 2002 noted the fatality risk to restrained front seat passengers by unrestrained rear seat passengers, who often acted as projectiles. A passenger who does not use a seat belt not only risks their own safety, but jeopardizes the safety of others.

In 2005, 426 persons who were fatally or seriously injured in OPP-investigated collisions did not use seat belts. Approximately 27% of OPP fatal motor vehicle collisions involve the non-use of seat belts. However, less than 10% of Ontario drivers do not use seat belts.

To date, in 2006, about 80% of fatal collisions involving three or more victims investigated by the OPP also involved the non-use of seat belts. The number of passengers versus actual seat belt availability is difficult to extract from collision information sources.

Some recent collisions:

—August 2006, a single-vehicle collision with 11 occupants in an SUV: nine were unbelted, four were ejected, two died;

—June 2006, a four-vehicle collision: three fatalities, five injuries, two were unbelted and one had no available seat belt;

—November 2005, a single-vehicle rollover: eight occupants with five available seat belts, one deceased, seven injured.

We put forward the following recommendations to this committee for its consideration:



**Recommendation 1:** The requirement for a passenger contravening seat belt requirements to identify themselves to police should be effective upon royal assent, at the same time as the rest of the bill. The current wording would have the passenger identification provisions come into force on proclamation, which means that these provisions would come into force at some undetermined future date. The police cannot enforce passenger seat belt infractions unless the passenger identification provisions are in force. It makes sense for all of the provisions of this bill to come into force at the same time.

The requirement for passengers to identify themselves originally received royal assent in 1996 as part of an earlier bill, but these provisions have never been proclaimed in force, adversely impacting on seat belt enforcement activity by the police. There is existing precedent in the HTA for passengers to have to identify themselves to the police in certain situations; i.e. passengers accompanying novice drivers.

**Recommendation 2:** New driver offence. The OPP supports a driver offence for carrying more passengers than available seat belts. The OPP believes that drivers should be responsible for providing for the safety of all passengers by ensuring the availability of a seat belt restraint for their use. Carrying more passengers than available seat belts is a risky driving choice that may compromise the ability of the driver to operate a vehicle safely. An offence would be included on the driver record, along with any points assigned.

Related HTA legislation supports such an offence. The prohibition against driving with more passengers than seat belt assemblies is both a G1 and a G2 licensing requirement. Section 106 of the HTA prohibits a driver from operating a vehicle with modified or altered seat belt systems. Section 162 prohibits a driver from operating a vehicle where either persons or property in the front seat may interfere with their control of the vehicle.

Thank you very much.

**The Chair:** Thank you. You've left about three minutes for each party to ask a question, beginning with the government. Mr. McNeely.

**Mr. McNeely:** Thank you, Inspector, for coming in.

It is, I think, worth repeating, and you probably have some personal experience with it, but the idea of someone in the rear seat not being buckled up and being referred to as a "projectile"—I just wonder if you want to expand on that.

**Mr. Mikstas:** I have personally witnessed and investigated in 31 years of policing, 19 years involved primarily in traffic—I've seen these tragic events unfold time and time again. The striking of somebody in the front seat by a human projectile—100, 150 or 200 pounds striking somebody in the back of the head or in the back has severe consequences. I've seen that many, many times.

**Mr. McNeely:** Any other questions from this side? I think that's all, Chair.

**The Chair:** Thank you. Mr. Ouellette.

**Mr. Ouellette:** Thank you very much for your presentation.

Just to continue on, you had mentioned about the projectile and being struck. Mr. Yakabuski mentioned earlier on about the proper headrest adjustments.

I wanted to address a couple of different issues. One is, you spoke about the identification factor, that that should be required at the time of royal assent. What's an acceptable identification for a 16- or 17-year-old?

**Mr. Mikstas:** The police officer would make that determination based on what is presented to them and the circumstances.

**Mr. Ouellette:** At this age, my kids aren't old enough to know what kind of ID they would be expected to carry on their person on a regular basis in order to provide that to make sure it's enforceable. I'm sure the government may be able to have some answers for those questions.

Another one was, how many booster seat charges and convictions have been laid since the legislation has come forward? Do you have any idea?

**Mr. Mikstas:** I don't have that in front of me.

**Mr. Ouellette:** The point I'm getting to is the enforcement of this particular act. When the staff's doing the morning briefing about their going out, I don't know that they are going to be able to identify—I mean, right now, Thursday morning, I'll be doing the Kiss 'N' Ride at the school, and if it's raining out, I tell you, I'm going to slide that van door open and there are going to be 10 kids coming out with two seats in the back. It's going to happen all the time. There's just no enforcement taking place with the booster seat aspect right now.

So how do you envision, for example, if the enforcement of the busing issue—if we can't get the booster seat issue being enforced to the point where it's level, how we can present statistics to say it's working or not working?

**Mr. Mikstas:** Those could be gathered, but a lot of this onus falls upon the operator of the vehicle, and that's what we're looking at.

**Mr. O'Toole:** If I may, just following up on that, probably the most controversial issue is the liability issue. In your view as an enforcement officer for over 30 years, and I'm the driver, whatever happens in the vehicle, who's ultimately liable for the negligence?

**Mr. Mikstas:** It depends on what actions have taken place.

**Mr. O'Toole:** No. I'm the driver of the vehicle; I'm the parent or I'm the most senior, oldest, whatever. The insurance issue—as Mr. Yakabuski would like to find out, who can they pin this on? Do you understand? That's ultimately what they want. They want to say—and with the school bus issue, that's the issue. You've got all of these kinds of shenanigans potentially going on that were outlined by the United Senior Citizens of Ontario. School bus drivers: They aren't giving them enough money now. Quite frankly, this is a separate issue, but they don't fund education appropriately. I just want to get that on the record.

*Interjections.*



**Mr. O'Toole:** No, no. I've met with the three boards of my area, and they aren't.

**The Chair:** Can I stop the cross-chatter? You have about 30 seconds left, Mr. O'Toole.

**Mr. O'Toole:** They aren't funding the school busing, is what I meant. They would be expected to be liable to ensure that every child had the seat belt on. Do you see what I'm saying? That's the issue, in a nutshell.

**Mr. Mikstas:** With respect to school buses, I understand that there are certain complex issues here that need to be looked at a little more carefully.

**Mr. O'Toole:** Yes, I know.

**Mr. Mikstas:** But I fully understand that, tempered with common sense, that has to be looked at. I don't have all the answers with respect to school buses.

**Mr. O'Toole:** Because they would have to get the seat belts—

**The Chair:** Mr. O'Toole, your time for questioning is up. I'm just letting the witness answer the question—

**Mr. O'Toole:** —the booster seats, the whole thing.

**The Chair:** —so let the witness answer. Your time is up.

**Mr. O'Toole:** Oh, I know. We've had a very good conversation. Thank you very much, Chair.

**The Chair:** Have you finished your answer?

**Mr. Mikstas:** Yes, I have.

**The Chair:** Thank you. Mr. Tabuns.

**Mr. Tabuns:** Thanks for the presentation. In your recommendation 2, you recommend a new driver offence making the driver responsible for ensuring everyone in the vehicle has a seat belt on. How effective do you think that will be in increasing the percentage of people wearing seat belts?

1710

**Mr. Mikstas:** I think it'll be very effective. I stand on the ramps myself. It's not my primary job, but I go out on the ramps myself. That's quite a frequent occurrence, to stop a vehicle and the passengers aren't wearing their seat belts. However, if the driver is subject to a charge and then demerit points are assigned to that, I think it'll be prompting a lot of people—certainly, as a driver, I make sure people wear the seat belts in my vehicle because I'm responsible for them. That's how I look at it. I'm operating the vehicle. I'm quite sure a lot of people would get the message, especially if there are points assigned to said offence.

**Mr. Tabuns:** Okay. Thank you.

**The Chair:** Thank you very much for being here today.

## ONTARIO SAFETY LEAGUE

**The Chair:** Our next delegation is the Ontario Safety League, Mr. Patterson.

We have your handout, just so you know. Thank you very much for being here. As you know, you have 15 minutes. If you could identify yourself for Hansard and the organization you speak for, you'll have 15 minutes. Whenever you're ready.

**Mr. Brian Patterson:** Thank you, Madam Chair. It's Brian Patterson. I'm the president and general manager of the Ontario Safety League. As most members of the Legislature know, the Ontario Safety League has been Ontario's chief public safety advocate since 1913. It's a pleasure to be here today with many of the partners that the Ontario Safety League worked with to bring seat belt legislation into this province, principally the CAA, the Insurance Bureau of Canada and all of the police services.

The Ontario Safety League supports the direction and substance of the new bill. We believe that it will save lives and make our roads safer. We commend the speed at which the Legislature has moved to address this serious issue. Although we see strength in this bill, we would propose the following amendments to ensure that the responsibility remains with the driver of the vehicle for those occupying the vehicle. We believe that there should be consequences for the driver, regardless of the age of the occupants, if he or she chooses to operate a vehicle with unrestrained passengers. We have proposed amendments and wording that may be of assistance to your committee. I don't want to draw your attention to that at the moment.

I'd like to tell you that one of the reasons I'm a strong advocate for seat belts is that in 1980, I lost a cousin, along with six other young men, in Manitoba. The vehicle rolled and all six were killed. They were young men in their teens and twenties. It has had a profound impact on Flin Flon, Manitoba, my aunt and my family. So any move by this Legislature to move quickly to improve seat belt use is a lifesaver that most people who have been touched by this tragedy would certainly commend.

I know, from my involvement in many of the safety programs that everyone here has taken part in, that we know that education, enforcement and engineering are the keys. With respect to school buses, we're going to defer to engineering at the moment. We see that there's strong engineering evidence that we have safely designed and constructed school buses. We're going to work very closely with Transport Canada to ensure that the questions that are brought by our members and the public are brought to their attention.

But education and enforcement is very much the key to saving lives under this legislation. I know that every day on the roads, police officers are faced with some ludicrous responses to failing to wear seat belts. People quite happily remind them that they don't have to wear them in the back seat, they don't have to wear them if they're going less than 40 kilometres an hour, they don't have to wear them if they're wearing a new suit or a nice dress, and they don't have to wear them while the sun is shining because they can see far enough ahead to protect themselves.

As ludicrous as those responses are, they're heard every day in this province. This bill will allow almost no exemptions under the Highway Traffic Act for not wearing seat belts. It will clarify every one of those



issues where people have any doubt in their mind. There ought to be no situation in which anyone gets into a motor vehicle in this province without having properly affixed a seat belt and wearing it adequately. The language that's used in our proposed amendments will cover a number of issues that have arisen in the "what if" category. It's startling how often safety issues under the Highway Traffic Act get "what-iffed" to death.

What if we don't adopt these amendments? We still believe this is a very strong bill as presented. It will make a difference in this province. We think it will be stronger with these amendments, but we want to commend the Legislature and the members present and all of those who worked long hours after this tragedy to bring this both to the forefront and to the Legislature for amendment.

I'm going to end there because I believe that you should speak up and stop when it's time. Thank you very much.

**The Chair:** A good philosophy. You've given us three minutes each to ask questions, beginning with Mr. O'Toole.

**Mr. O'Toole:** Thank you very much, Mr. Patterson. I appreciate the work that you do professionally and, in a very neutral position, speaking as passionately as you have on important policy decisions put before the government.

Most of the stakeholders today have a long history, whether it's the CAA or the insurance bureau or yourself, of advising governments on the right policy and the right balance, quite frankly. I just wanted to make sure I put on the record that comment with respect to the work you do and the advice you give.

I'm a little concerned—you're pretty clear on who's responsible in the case of a violation—when you get into demerit points, like if I'm the parent and we've got four children and I don't have the money for a van with more passenger seats. This new law doesn't give me too much flexibility. I am concerned about the implications of that nature. That being said, I want to be very clear that we're the same, passionately, as you are here about making sure that everyone wears a seat belt. Everyone should buckle up; there's no question about it. But what if you had four children and you're of modest means and the seat belts, the booster seats and all the stuff that's going on now, all of which are important—the driver, ultimately, the working parent, could almost find themselves in jail.

**Mr. Patterson:** This isn't proposing that anyone to go jail, but what it really requires is that you take active consideration that everyone's belted. I'm a parent myself and I don't know how I would pick between—I come from a family of five kids. I don't know whether my mom or dad would pick which of us wouldn't be belted so that in the event of a crash we'd be playing Russian roulette with the family.

**Mr. O'Toole:** They'd just leave you home. No, it's tough.

**Mr. Patterson:** So it's a tough—and I think we've clarified it: If you're in a vehicle, you're in a seat belt. That's the direction we'd like to go, and we hold the

driver responsible. That's the next step that we think you should consider as legislation.

**Mr. O'Toole:** Well, we're in support of the bill. I appreciate you coming forward today and stating very clearly the position of the Ontario Safety League.

**The Chair:** Mr. Tabuns?

**Mr. Tabuns:** Yes. Thanks for the presentation today. It was much appreciated. How much more effective do you think it will be to ensure that the driver is responsible for seeing that everyone is belted in?

**Mr. Patterson:** I think, again, it clarifies who's responsible: the captain of the ship, the conductor of the train and the driver of the vehicle. The driver has the ultimate ability to turn the key off or not go forward and to ask people to get out of the vehicle while it's still safe to do so.

I think somebody has to be responsible and it ought to be the driver. I don't see the reasons for exemption. If you're operating a motor vehicle, I don't think people can opt out and select to take a high risk of riding without a seat belt and potentially killing other riders. The first responders that we deal with—in fire, emergency and police—tell us that it's a daily occurrence that someone is injured significantly because of a flying body within the cavity of the vehicle, or that that person's injuries are significantly enhanced. So I think the driver can take that responsibility. We pass that onus on to a lot of people, and any commercial driver has significant responsibilities to be on the road. I guess I refer back to my dad, when I wanted to borrow the car: It's a privilege to drive in Ontario, and that's one of the conditions that you're going to have to live by.

**The Chair:** Thank you. Mr. Lalonde.

**Mr. Lalonde:** Just quickly, on your second amendment that you have proposed there, it reads this way: "... and that every person shall wear the complete seat belt assembly in a properly adjusted and securely fastened manner." I asked the question a little while ago if cars now would have to build in more than three seat belts for the back seat, because according to this, we will force a family of more than three children to buy a van.

1720

**Mr. Patterson:** I think the wording comes from the Highway Traffic Act. We've mirrored the wording in the Highway Traffic Act with regard to the assemblies. I think the retrofitting of seats etc. is something that may be best answered by the manufacturers, but we've been actively involved in seat belts and seat belt installation etc., and it's surprising how quickly the manufacturers will provide those kits or adjustments, as required.

**Mr. Lalonde:** In other words, we'll have to make sure that our ministry, MTO, does consult with the manufacturers at the present time. My colleague here says he has seen before that two people were tied up with the same seat belt.

**Mr. Patterson:** That's not the intention of the seat belt assembly, and that's not the engineering design



under which it was built. We're back to possibly exacerbating the problem by doing that.

**The Chair:** Thank you, Mr. Patterson. We appreciate your being here today.

#### POINTTS ADVISORY LTD.

**The Chair:** Committee, you're way ahead of schedule, and we have saved the best for last: POINTTS Advisory Ltd., if they could come forward. Mr. Lawrie.

Welcome, and thank you for coming early. That allows us to move our schedule along. We appreciate your being here.

**Mr. Brian Lawrie:** I was just lucky, Madam Chair, I believe.

**The Chair:** It's our luck; otherwise, we would have had to recess. So thank you very much for being here. If you could state your name and the organization you speak for, you'll have 15 minutes. If there's time left at the end, we'll be able to ask questions.

**Mr. Lawrie:** My name is Brian Lawrie. I'm president of POINTTS Advisory Ltd. Thank you for the invitation to come here today to speak on this.

With respect to Bill 148 and its intent to ensure that every driver and passenger in a motor vehicle is and can be secured by an approved seat belt, I would like to make two suggestions.

The first relates to the requirement for, and the manner in which, a passenger who is not secured by a seat belt shall identify themselves. Based on my 15 years as a police officer, 10 of which were in Toronto, it is not uncommon to be dealing with intoxicated and belligerent passengers, particularly after the bars close. If the act requires only verbal identification, as it appears now, I can foresee all sorts of difficulties arising from false information being given. If it is obviously false information or, indeed, a passenger refuses to identify themselves at all, the situation may escalate rapidly to the point of an arrest for the Criminal Code offence of obstructing a police officer in the execution of his or her duty, since that is the only option available to the police officer in order to establish the identification. A lengthy and costly criminal prosecution ensues, with judges understandably loath to impose a criminal conviction for what began as a minor offence.

If it is false information which is not apparent to the police officer, a costly provincial offences procedure is commenced against a non-existent person. This has been the case with such things as pedestrian and bicycle offences where the same standard of identification was required.

I feel that the requirements of section 106(4), which deals with a driver's obligation to ensure passengers under 16 years of age are properly secured, should be expanded to place the same obligation on the driver for all passengers in the vehicle, together with an increase in penalty for non-compliance.

The other option—departing from my speaker's notes—is to include in the act a similar power of arrest to the police officer for this particular matter, similar to the one which already applies to drivers who fail to identify themselves.

My second suggestion deals with another section of the act, and it's section 106(1) of the act to amend, which deals with the removal or alteration of seat belts. I feel that the words contained in that subsection, "so as to reduce its effectiveness," should be removed. The reason for that is that, increasingly now, certain drivers known as street racers are installing five- or six-point harnesses similar to those found in a professional racing car or in a fighter plane. This is done, apparently, to enhance the race car or the look of the vehicle and to give the driver a competitive advantage in a race, together with an increased sense of security at high speed. I feel that this practice would be discouraged and even prevented by removing these words from the act and allowing the police to prosecute without the onus of having to prove the degree of effectiveness of the modified seat belt assembly.

These are my short and respectful suggestions. I will attempt to answer any questions you may have.

**The Chair:** Thank you. You've left about three and a half minutes for each party, beginning with Mr. Tabuns.

**Mr. Tabuns:** You had quite a lot of good points there; thank you.

The one question that I want to go back to is this question of making the driver responsible for ensuring that everyone in the vehicle has their seat belt on. What difference in effectiveness do you think will be made by having or not having that requirement in place?

**Mr. Lawrie:** There would be greater pressure on a driver to actually ensure that, because not wearing a seat belt, for the driver, carries demerit points. In this particular case here with the passenger, of course, if there's no driver's licence, then there won't be any demerit points. It doesn't even call for demerit points for the passenger not wearing the seat belt. So there's a greater incentive for the driver to ensure that everybody has a seat belt on, quite apart from the obvious one, which is that you want people to be safe.

**Mr. Tabuns:** Okay. Thank you very much.

**The Chair:** To the government side. Mr. McNeely.

**Mr. McNeely:** Thank you, Mr. Lawrie, for coming in and giving us your comments.

We had someone from the Ontario Provincial Police, Inspector Brent Mikstas, in earlier. He said there is a precedent in the Highway Traffic Act for passengers to have to identify themselves to the police in certain situations; i.e. passengers accompanying novice drivers. He felt, I think, from what he said—that's certainly the implication I got—that that was sufficient. Any comments on that?

**Mr. Lawrie:** It's my understanding—and I defer to the OPP, as I always do—that the requirement is that the person who accompanies a novice driver must be a licensed driver; therefore, they must have a driver's



licence. A passenger isn't necessarily required to have a driver's licence.

**Mr. McNeely:** I have no other questions.

**The Chair:** Any other questions from the government side? No? Okay. Mr. Ouellette.

**Mr. Ouellette:** Once upon a time ago—it didn't seem that long ago, but actually it was—we used to participate in some other activities: four-wheeling and four-wheeling activities, whereby five- and six-point harnesses were in place at that time, because part of the off-road activity was ensuring that during rollovers the drivers were safe and the individuals had no problems; the same with rally car drivers etc. These vehicles, even rally cars, can be modified street cars that are used in a rally that use these seat belts as well. Don't you think it's a bit restrictive just to try to reduce it in order to stop street racing, as opposed to ensuring the safety of those individuals participating in other activities that might utilize a five- or six-point hitch?

**Mr. Lawrie:** Yes, now that you mention it—because I haven't considered that at all. I considered the family car or the street racing car only. Whether there are exceptions that could be made for people who actually engage in that, who can show they engage in that type of activity, I don't know. I know that we have people coming in to the POINTTS office regularly who are stopped by the police, who are basically trying to discourage the modifications that are placed on these vehicles, and these have been seized because they don't correspond to the CSA.

**Mr. Ouellette:** I understand the direction you're trying to go in. It's just that when we bring legislation forward, it has a tendency to impact other groups that haven't been considered. I know that rally car drivers or typically a lot of the smaller groups in the small rallies use normal street cars that are modified at certain times to be used in that, and that's one of the modifications.

I'm not sure if Mr. O'Toole has any questions.

**Mr. O'Toole:** Thank you very much. It was a very insightful submission.

I'm quite interested in your amendments, as they're repeating what was mentioned by the Ontario Safety League: the clarity of the age and disclosure under section 8.1. I think that's extremely important. I hope the government takes that under advisement, to get that administratively.

I'm wondering, though, in your opinion, why they would have left it that way, for people 16 to disclose—they might give them demerit points, do you think, if they're licensed, and give them an additional fine? Maybe it's just a revenue—it's sort of a tax thing.

1730

**Mr. Lawrie:** The ministry, actually, as I understand it—

**Mr. O'Toole:** They like to raise the taxes, is the point I'm making.

**Mr. Lawrie:** Say a young offender was driving a vehicle at 14 years old and they're charged and convicted of careless driving or whatever, as well as driving without a licence. It's my understanding that what the ministry does is issue a driver's licence number to that person when they're convicted and then sets the demerit points there. But when it comes down to false and misleading identifications, that's where the difficulty comes in. It's a very difficult situation for a police officer to be faced with that, especially when you've got to deal with somebody talking overtop three other people and—

**Mr. O'Toole:** I'd like to support your idea.

**The Chair:** Mr. O'Toole, I'm sorry, but your time has expired.

**Mr. O'Toole:** It's a simple administrative—thanks very much, Chair.

**The Chair:** Thank you, Mr. Lawrie. We appreciate your very interesting discussion at the end of the day. You've got us to think about this in a different way. Thank you very much.

**Mr. Lawrie:** Thank you, Madam Chair.

**The Chair:** I'd like to thank all of our witnesses, committee and staff for their participation in the hearing.

This committee now stands adjourned and will reconvene at 4 p.m. on Wednesday, October 25, 2006.

*The committee adjourned at 1731.*











## CONTENTS

Monday 23 October 2006

<b>Subcommittee report</b> .....	G-843
<b>Highway Traffic Amendment Act (Seat Belts), 2006, Bill 148, Mrs. Cansfield / Loi de 2006 modifiant le Code de la route (ceintures de sécurité), projet de loi 148, M<sup>me</sup> Cansfield</b> .....	G-843
United Senior Citizens of Ontario .....	G-843
Ms. Marie Smith	
Canadian Automobile Association of Ontario .....	G-845
Mr. Kris Barnier	
Insurance Bureau of Canada .....	G-848
Mr. Mark Yakabuski	
Police Association of Ontario .....	G-849
Mr. Bruce Miller	
Ontario Motor Coach Association .....	G-851
Mr. Brian Crow	
Ontario Provincial Police .....	G-852
Mr. Brent Mikstas	
Ontario Safety League .....	G-854
Mr. Brian Patterson	
POINTTS Advisory Ltd. ....	G-856
Mr. Brian Lawrie	

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### Chair / Présidente

Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)

#### Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)

Mr. Kevin Daniel Flynn (Oakville L)

Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)

Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell L)

Mr. Jerry J. Ouellette (Oshawa PC)

Mr. Lou Rinaldi (Northumberland L)

Mr. Peter Tabuns (Toronto–Danforth ND)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### Substitutions / Membres remplaçants

Mr. Phil McNeely (Ottawa–Orléans L)

Mrs. Carol Mitchell (Huron–Bruce L)

#### Also taking part / Autres participants et participantes

Mr. John O'Toole (Durham PC)

#### Clerk / Greffière

Ms. Susan Sourial

#### Staff / Personnel

Mr. Andrew McNaught, research officer,  
Research and Information Services





G-34

G-34

ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 25 October 2006

# Journal des débats (Hansard)

Mercredi 25 octobre 2006

## Standing committee on general government

Highway Traffic Amendment Act  
(Seat Belts), 2006

## Comité permanent des affaires gouvernementales

Loi de 2006 modifiant le Code  
de la route (ceintures de sécurité)



Chair: Linda Jeffrey  
Clerk: Susan Sourial

Présidente : Linda Jeffrey  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)





## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 25 October 2006

Mercredi 25 octobre 2006

*The committee met at 1600 in room 151.*HIGHWAY TRAFFIC AMENDMENT ACT  
(SEAT BELTS), 2006LOI DE 2006 MODIFIANT LE CODE DE LA  
ROUTE (CEINTURES DE SÉCURITÉ)

Consideration of Bill 148, An Act to amend the Highway Traffic Act respecting the use of seat belts /  
Projet de loi 148, Loi modifiant le Code de la route en ce qui concerne le port de la ceinture de sécurité.

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The standing committee on general government is called to order. We're here today to continue public hearings on Bill 148, An Act to amend the Highway Traffic Act respecting the use of seat belts.

ONTARIO PROVINCIAL POLICE  
ASSOCIATION

**The Chair:** Can I call our first witness forward, the Ontario Provincial Police Association, Mr. Walsh. Welcome. As you get yourself seated, are you doing the presentation? Is that yours?

**Mr. Karl Walsh:** Yes. I just have an opening remark beforehand.

**The Chair:** Can I ask you to identify yourself and the group that you speak for for Hansard? You'll have 15 minutes. If you leave time at the end, there will be an opportunity for all members of the committee to ask you questions.

**Mr. Walsh:** Thank you. There should be plenty of time after.

Good afternoon. My name is Karl Walsh. I'm the president and CEO of the Ontario Provincial Police Association. The Ontario Provincial Police Association is the representative bargaining agent for over 5,400 uniformed and 2,500 civilian members of the Ontario Provincial Police. We're very proud of our 8,000 Ontario Provincial Police uniformed and civilian members, who provide community-based policing and specialized policing services to residents in over 460 municipalities in Ontario.

The Ontario Provincial Police Association thanks the government for providing it with an opportunity to address the committee on this very important issue.

Before I go any further, I have a short PSA I'd like to show you.

*Video presentation.*

**Mr. Walsh:** I wanted to bring this PSA to you. It was brought to us from our brothers and sisters in Ireland, and it's a graphic representation of what our officers see on crash sites. It's also an important illustration of why we think Bill 148 has to have an educational component attached to it. What you've just seen, which I've already highlighted on, are the effects an unbelted person can have in an unbelted situation in a motor vehicle accident.

The proposed legislation, An Act to amend the Highway Traffic Act respecting the use of seat belts, is a much-needed and long-overdue amendment to the act. While it's true that Ontario was the first jurisdiction in North America to make wearing seatbelts mandatory, we have not been the first to recognize the effects an unbelted party in a vehicle can have on the driver of that vehicle, other passengers, as well as the drivers and passengers of other vehicles on our roadways.

The OPP Association supports Bill 148 and encourages you to consider a few other items. These items I am about to mention can have huge effects on the health and safety of Ontarians and firmly establish this government as one that truly cares about safety on our roadways.

The exemption of commercial motor vehicles must be tightened. Police officers frequently attend crashes where multiple injuries or deaths have occurred as a result of this exemption. We frequently will see incidents where worm-pickers transport as many employees as is possible in a vehicle and where minors borrow vehicles so they can transport their friends, only to be involved in serious accidents while en route. We must bear in mind these accidents kill and maim people, impact emergency services, disrupt traffic and have adverse effects on the economy. It is a proven fact that delays on our highways and roadways have direct financial impacts on the economy.

As well, police must have the ability to identify passengers contravening this section of the act. Without this ability, the section has no credibility and does nothing to assist police and emergency workers in their duties. I understand that the proposed legislation includes that, and we thank you for that.

Furthermore, the current delays we face, which are aggravated by our inability to gain access to driver's licence information over the MTO system, should and



must be overcome. This is a long-standing issue. My understanding of this issue from my conversations with the MTO minister is that there is no difficulty with respect to the software that exists between our agency and the MTO. What we're simply asking for is the ability to gain access to the photo information that's on the MTO database. There are no software problems. I don't know what the holdup is; I wish I could tell you what it is. I'm a little concerned that there may be some empire protection going on and that the safety of Ontarians and our ability to do our job on the road is being affected by that.

Lastly, I'd like to highlight the possible abuses that may erupt with respect to pickup trucks. We've seen the effects an unbelted passenger can have within a vehicle. Imagine what an unbelted person can do to traffic on a twelve-lane highway after a driver simply takes evasive action in his or her pickup truck. That's meant to illustrate people who are transporting people in the beds of their pickup trucks. When they're tooting along down the highway and they have to take evasive action, you can only imagine what the effects would be on a passenger in the back of that pickup truck.

In 2005, the OPP laid approximately 35,418 charges relating to the provisions of section 106 of the Highway Traffic Act; 28,052 of these were for not wearing a seat belt. Transport Canada indicates that approximately 92% of Ontarians are buckling up. The 2004 Ontario Road Safety Annual Report stated that approximately one third of fatally injured drivers and passengers were not wearing seat belts. Overall, unbelted vehicle occupants involved in fatal or personal injury collisions are 24 times more likely to be killed than belted drivers.

As a 19-year veteran police officer, I feel this legislation can and will reduce the serious injuries and deaths we see every day on our roads and highways. I am aware that the Police Association of Ontario has presented to you, and I wanted to echo their comments and emphasize that our staffing levels and resources do not allow our officers to do the amount of enforcement they would like to do in this area.

I'd like to thank the Minister of Transportation for bringing this forward and the members of the Legislature for their support of Bill 148. This bill is an important part of reducing serious accidents and deaths in Ontario and strengthening safety on our roads and highways. I would like to thank the members of the standing committee for the opportunity to appear before you, and I'd be pleased to answer any questions you may have.

**The Chair:** You've left about two and a half minutes for every party to ask you a question, beginning with Mr. O'Toole.

**Mr. John O'Toole (Durham):** Thank you very much for your presentation. It's a pleasure to meet you for the first time. Thank you for the work you're doing—the police association work, the OPP—at Caledonia right now.

That being said, I hear what you're saying and I have a couple of questions on what we've heard during the

hearings. Basically, there are three or four areas that there's some controversy about—nothing of any great disruption between the parties in any way; it's just listening to the input. One is the school bus issue, the exemption for school buses; one is the motor coach issue; one is the farm vehicles, as you've described; and one is the vintage vehicles.

The most pressing one here in your presentation would probably be farm vehicles, farm workers. I think you made reference to some sort of tragedy involving migrant workers a couple of years ago. Have you got any other suggestions? In my area, for instance—and I'm only speaking on my own behalf, but with respect to what I know is somewhat of a traditional practice: moving persons from field to field or from orchard to orchard, primarily in fruit and vegetable and horticulture, where they're often working as groups. Picking apples would be a perfect example. And I would suggest if you've got any way we could safely recognize what's happening in reality—some of these areas would be policed primarily by the OPP, really. Most of them are rural areas, and you have a lot of those jurisdictions.

**1610**

Your movie is enough to scare the heck out of anyone—a projectile of a human body, or the vehicle that's coming towards that unfortunate farm vehicle is at more risk. And the issue of liability comes up.

We haven't heard from the Ontario Federation of Agriculture or the OFVGA. Some of the members from all sides here on these committees represent rural ridings. It is important to make sure that we don't red tape ourselves into a corner. What advice would you give in response to that issue that you've raised?

**Mr. Walsh:** I appreciate your comments. I can tell you, from my experience, I've actually been to an accident where a car got wrapped around a pole and the passenger on the right rear side of the vehicle popped out through the rear window and actually landed on his feet, conscious, outside of his shoes. I think it's really important that the committee go ahead and push this through. I think there's ample opportunity after the fact to discuss issues revolving around migrant workers, things like that. Statistically speaking, we find that most people get into accidents close to home. I think it's safe to say that those accidents also, statistically speaking, frequently happen close to work as well because, after all, that's where you're coming from or going to.

**Mr. O'Toole:** Just one other thing. I had heard—

**The Chair:** Thank you. I'm sorry, Mr. O'Toole, you've exhausted your questioning time. Mr. Tabuns.

**Mr. Peter Tabuns (Toronto-Danforth):** Mr. Walsh, thanks for the presentation. One of the questions I've asked other speakers has been the whole question of putting the onus on the driver to ensure that everyone in the vehicle is buckled up. Is that an amendment to this proposal that your organization would support?

**Mr. Walsh:** I think it's a little difficult to ask one adult to ask other adults to behave like adults. If it's a case where somebody is under the age of 16, then I can



totally accept the argument. But I think it's a well-educated society, and we all know what the ramifications are of not putting your seat belt on. So if you run across the police and you've decided to make a conscious decision not to wear your belt, I think that person is the person who should be held accountable, not the driver of the vehicle.

Besides, you're going to run into a situation where you have four occupants of a vehicle: the driver is belted, one of the passengers is and two of the passengers are not. You're leaving an officer standing at the side of the road having to make some pretty difficult decisions on how many tickets you want to pile up on that person. How punitive do you want this to be? There's got to be an educational component to it, and I think a lot of that education takes place at the side of the road. Some people may appreciate that education, some people don't appreciate that education, but it's certainly our job to point that out at the side of the road.

I would leave it up to the individual, providing they're of a reasonable age—say, the age of consent. If you're old enough to buy a bottle of beer, then maybe you're old enough to accept the responsibility of not having worn your seat belt.

**Mr. Tabuns:** Thank you.

**Mr. Dave Levac (Brant):** First, Karl, thank you so much for the work you do, day in and day out. I too want to echo a comment, but reinforce the work that's been going on in Caledonia. I've been fortunate enough, and I say fortunate because I got a chance to see on a weekly basis what's happening in Caledonia in my membership on a committee that deals with the community and the OPP. The officers have been doing an exemplary job in that community, and I thank you for it. Please pass that on.

I also thank you for the work you're doing on our highways. We are the best in the world, from my understanding and third party analysis. We're the best in the world, but this bill says we can do better. What I'm hearing is that you have no problems with the bill itself and that you're willing to take a look at other issues that come along the way. I point out that the one Mr. O'Toole talked about—John, you can help me. I think Doug Galt introduced the first private member's bill in the committee I sat on for trucks and pickup trucks, the beds. Lou Rinaldi reintroduced it, and the minister has made the commitment to deal with that. So it's not necessary that this particular issue get dealt with in Bill 148, if I'm hearing you correctly.

**Mr. Walsh:** You are, sir.

**Mr. Levac:** And last but not least, I'll just ask you maybe an educational question. The PSA that we just saw was probably one of the most powerful commercials I've seen. Do you believe the type of commercial that's showing in Ireland would be as effective in North America and, more importantly, in Ontario?

**Mr. Walsh:** Oh, absolutely. I think kids today are very graphic and need some sort of visual depiction of what can happen to them in a motor vehicle. I think

there's a little bit of naïveté when it comes to the youth who are out and about in their vehicles, and I would say you could probably go a step further than this. Volkswagen puts out a number of PSAs. I think they focus mainly around the safety of their vehicle, but it's also a good illustration of what can happen to a body while it's inside a vehicle. I think it needs to be as powerful, if not more powerful.

**Mr. Levac:** Thanks for your work.

**Mr. Walsh:** And I appreciate your comments on Caledonia.

**The Chair:** Thank you very much for your time today, Mr. Walsh. We appreciate your being here.

#### CANADIAN VEHICLE MANUFACTURERS' ASSOCIATION

**The Chair:** Our next delegation is the Canadian Vehicle Manufacturers' Association. Welcome. Thank you for being here. I know you've been here before, but I'll go through the drill. I know you have a slide deck to show us. As you get yourself settled, if you could say who you are and the organization you speak for, and once you begin you'll have 15 minutes. If you leave time, there'll be an opportunity to ask questions.

**Mr. Mark Nantais:** Thank you, Madam Chair. My name is Mark Nantais. I'm president of the Canadian Vehicle Manufacturers' Association. My organization represents Canada's largest manufacturers of vehicles, cars and trucks: DaimlerChrysler, Ford Motor Co. of Canada, as well as General Motors of Canada and the International Truck and Engine Corp.

The reason I'm here is to really offer our support for this regulation. It's something that we think is absolutely critical. I thought I'd start off by perhaps giving you some sort of indication of the evolution of safety technology in vehicles, because it's this evolution of technology, quite frankly, that has contributed in one of the largest ways to reducing serious injuries and fatalities in motor vehicle accidents. This particular slide gives you an indication of a whole series of vehicle safety technologies that have been introduced since the early 1960s, both voluntarily by industry and also in response to regulation. The key thing here, however, is to note the very dark bar graph at the bottom, which shows the continuous decline in fatalities as a result of some of these technologies we've introduced.

The previous speaker, in his PSA example, clearly showed what can happen in a collision. When one talks about a collision there are really three events. There's the vehicle-to-vehicle collision and there's the body-to-vehicle collision, if you will; that is, the body hitting the various hard structures of the cab of the vehicle. But in our industry we look beyond that even to the third dimension, which is—it sounds rather gruesome—the organs hitting the hard structures of the skeleton. That's all part of our research, and it's essential to how we actually design vehicles from all different aspects.



Here are the reasons why we believe that a regulation such as this is really critical. During the past 15 years, fatalities of Canadian vehicle occupants have declined, primarily because of higher seat belt usage; in Ontario, as was previously mentioned, it's 92%. There's still room for improvement there, but clearly, when an occupant is properly restrained, that person is definitely in a better position to survive a crash, both in terms of injury as well as fatality. This is an index, actually, of occupant fatalities, using 1988 as a baseline. But you can clearly see, as long as we have had higher seat belt usage, the number of fatalities, and again also serious injuries, have been kept at a lower level.

But something still is really critical here, as we move forward: 37% of all in-vehicle fatally injured persons were unbelted. This is particularly true in rural parts of Canada, where we have single-vehicle rollovers and accidents. Unbelted fatalities continue to represent roughly 800-plus, almost 900, actually, as we now look at newer numbers, as a result of not wearing seat belts.

1620

In Canada, in terms of vehicle design, we're governed by the federal Motor Vehicle Safety Act and the regulations thereunder, which we call the Canadian motor vehicle safety standards. That ensures that every on-road vehicle sold in Canada must actually be certified and satisfy the requirements of those safety standards.

What's also critically important is what goes on, provincially speaking, across the country. Those are the regulations that require seat belt use. Compliance and enforcement is absolutely critical there.

We must install approved seat belt assemblies at each designated seating position. That's the law. Certain seating positions must be equipped with both upper and lower anchorages for child seat installations—proper installations, I might add. All of our member companies have a great deal of literature and educational materials to help young parents, or any parent, properly install a child seat.

We also look at it not just from the idea of having seat belts, but it's really the integration of several components of a total safety system, and that includes energy management; these are the crush zones built into the design of the vehicle, the sensors involved to set off the airbags, airbag deployment. We've now gone through at least three generations of airbags and have got to a point where they're actually very smart; they can determine through sensors how quickly to deploy or not to deploy. We have the vehicle structure, the overall safety architecture, which is actually part of the safety system. Of course, there's the seat belt and the retractor systems. They all play together. When we have an accident, it really occurs in a matter of a fraction of a second, in the range of 300 milliseconds, to be exact. All these different components of the safety system must integrate and deploy within that time frame in order to deliver the safety benefit.

I'm not going to go through what is and is not in the regulations, what are currently retained responsibilities or

what the new responsibilities are, but clearly, to leave enough time for discussion, I again give you our assurances about promoting the use of safety belts for all vehicle occupants as described in the owner manuals and as required by law.

We want to commend the government for their prompt action to enhance the seat belt use requirements of Ontario with the proposed amendments to Bill 148. We believe that continued education and enforcement of seat belt use does really provide one of the greatest opportunities to continue to improve occupant protection, not just in Ontario but across all of Canada.

I'm going to stop there, Madam Chair. I'm certainly here to answer any questions you may have.

**The Chair:** Thank you. You've left about three minutes for each party to ask a question, beginning with Mr. Bisson.

**Mr. Gilles Bisson (Timmins-James Bay):** Just a couple of quick questions. First of all, would it be more effective, in your view, if the law were that the person who drives the vehicle would ultimately be responsible and can be charged if people don't put a belt on, rather than the individual? I came in part-way, so maybe—

**Mr. Nantais:** I did hear the previous presenter's response to your question in that regard and I think it was a very good response. There comes a point in time when adults have to act as responsible adults. I agree that when one is 16 years of age or younger, clearly that's a different scenario, and I do think there's a responsibility on the driver of that vehicle to ensure that all occupants are properly restrained using seat belts and child restraint systems. We've always maintained that not only should everybody be properly restrained with seat belts but anybody under the age of 12 should be properly buckled up in the backseat, using, in the case of a smaller child, either a booster cushion, as it may be appropriate for the size and weight of the child, or a proper child restraint.

**Mr. Bisson:** That's all I have.

**The Chair:** Mr. Levac?

**Mr. Levac:** Thanks very much for the presentation. If I heard this right and did the briefing in my mind with this package, you're already there in terms of providing the vehicles with one seat belt per passenger. I commend you for it and I thank you for it. It sounds to me like somebody is not getting credit for advancing us. It sounds to me like you've already done voluntary implementation into your designs, by the general surveys you've done on public safety and security; they're selling vehicles because they're safe vehicles instead of because they look good. I want to congratulate you and thank you for that.

I also want to thank you for the support on this and the comment that we acted as quickly as we could on this particular issue.

The Canadian Vehicle Manufacturers' Association has participated in the past with PSAs. My question is a simple one and maybe a little bit of an easy one: Would the manufacturers' safety council continue to be available to assist the government with participating in PSAs similar to the ones we saw today?



**Mr. Nantais:** We're always open to doing what we possibly can to promote vehicle safety, so a short answer would be yes.

**Mr. Levac:** And as part of an education process on the value of wearing seat belts? What we have now is empirical evidence, as your own work has shown, that with the use of seat belts we lessen the opportunity for somebody to get killed.

**Mr. Nantais:** That's right, and real-world experience demonstrates that as well.

**Mr. Levac:** Thank you very much for your work.

**The Chair:** Mr. Duguid, you've got a minute and a half.

**Mr. Brad Duguid (Scarborough Centre):** Really quickly: Does the technology exist to build cars that make it mandatory to wear seat belts for the cars to work and, if so, is it cost-prohibitive at this time? If not, then the answer is obviously no.

**Mr. Nantais:** That's been an ongoing debate. In fact, we've had a lot of discussion with Transport Canada and other regulatory agencies in other jurisdictions about what we call a belt interlock, an ignition interlock system where you can't drive the vehicle unless everyone's belted.

The cost does become an issue. We already have notification systems in the vehicle. In other words, if you're not buckled up, whether you're the driver or any passenger, then there will be an audible sound, which is quite annoying, that indeed you better buckle up. There's also probably a telltale on the dashboard, or both, to tell you that indeed you're not buckled up. That seems to be quite effective, but the question of interlock systems starts to become issues of cost as well as of customer satisfaction.

**The Chair:** Mr. O'Toole.

**Mr. O'Toole:** Thank you very much, Mark. I'd also like to extend my congratulations on the work you're doing. The chart on page 3 is excellent. Also, on the airbags, they initiated this stuff on their own and clearly did that; it's there to prove it's good work.

Just a couple of points here just to put it on the record, because the Chair will likely cut me off. The previous presenter, from the OPP Association, asked for data to be shared, and I think it's part of the enforcement issue with the MTO. I'd like that officially on the record for the parliamentary assistant or whoever, to make sure we get a response to this committee before next week so we know if in fact there is some bureaucratic nightmare. The issue of identifying those over 16 and the enforceability issue is partly what the OPP is talking about. It's the second time we've heard the issue: identification of persons over 16. On the record, I'd like to say that I don't think the over-16s should also get demerit points. They're not driving. They might be able to get fined, though. They'll whack them for \$250 or whatever it is. That's about more taxes. I get that.

In terms of the government's current response to this issue—I'm in the opposition, I'm not in government, so it's my job to point out things. It's interesting. They'll have that opportunity next term; some of them will.

I'd like to put on the record that Emile Therien, the president of the Canada Safety Council, whom you would know, wrote to the minister and to Dalton a year ago, November 15, 2005, asking for this very thing. We have had an additional series of deaths, some of which occurred on October 14. We support this. All parties have been working—

**Mr. Phil McNeely (Ottawa—Orléans):** Where were you eight years ago?

**Mr. O'Toole:** Pardon me.

**The Chair:** Can we just stop the cross-chatter and let Mr. O'Toole use his time?

**Mr. O'Toole:** See, this is what happens. When you do point something out, as it is our duty to do, they sometimes take exception. I understand that.

**The Chair:** Mr. O'Toole, you're using up your time.

**Mr. O'Toole:** We did. The Conservative government introduced this 30 years ago in October. Bill Davis did it. Mitch Hepburn never had the chance.

The point I'm trying to make, Mark, is that the industry is doing a great job. The enforceability is an issue with this.

I have one actual question. I've had the privilege of working with you over the years. I worked in the industry for 31 years myself and am quite aware of some of the strides they've made. Vintage cars: There are those that have been in contact with us and they don't want this in the vintage cars. That's one. The other is street racing. Frank Klees, one of our members and a former Minister of Transportation, has a private member's bill on street racing. There are after-market modifications for six-point belts for some of these young people with these flared-up cars with various modifications. What's your stance on those two issues: the one on street racing and the after-market, and the vintage cars?

**Mr. Nantais:** Let me start with the after-market and vintage cars. Any time the after-market attempts to install after-market devices or equipment that could potentially jeopardize the structural integrity of the vehicle, we have a problem. That would involve whether it's an actual structural element of the vehicle or whether it's actual original equipment—wiring, harnesses and so forth. When one taps into wiring, harnesses and so forth, because the vehicle is also a very integrated sort of computer system now—in fact, it's one big computer, in many respects—you run the possibility of creating fires and things like that, which presents a safety risk as well. So we always have concerns when any after-market equipment or jobber decides to invade the structural integrity of a vehicle. That's very much a concern to us. When one starts to mess with seat belts and anchorage points, which are already an engineering design in the vehicle—that's something people really shouldn't play with.

On your other question about street racing, it's pretty obvious what our position is: Anytime somebody breaks the law by exceeding the speed and doing it in a very aggressive and competitive way, that's something that is unacceptable.



**The Chair:** Thank you, Mr. Nantais. We appreciate you being here today and bringing your thoughtful presentation.

**Mr. O'Toole:** Chair, on a point of order, just to be on the record here: First of all, there were some questions, points of information. I would like a response to the question on the sharing of data between MTO and the OPP or police services. That question was raised and we need an answer on it, because it will be part of the enforceability. If you look at the presentation, the OPP asked for a delay of the proclamation of the bill until that issue is resolved. This happened on Monday, I guess it was. I'm going on memory, but they did mention that in their presentation, that that portion of the bill not be proclaimed—

**Mr. Levac:** OPP?

**Mr. O'Toole:** Yeah, the OPP, on Monday, Dave.

**Mr. Levac:** The OPP, not the OPPA?

**Mr. O'Toole:** This was the OPP Association. This was the OPP, the deputy divisional manager, I think.

**Mr. Levac:** Okay. Thanks.

**The Chair:** Is your question to the parliamentary assistant or to research?

**Mr. O'Toole:** I think the parliamentary assistant could probably get us an answer. It may be just a straight no. Sometimes it takes some initiative to move these things along. I'm not trying to prolong things here, because I'm supposed to respond to Gerry Martiniuk's speech up there in a couple of minutes.

**The Chair:** You said you had a couple of points?

**Mr. O'Toole:** That was one. The other one was that I had asked for some information from other jurisdictions from research.

**The Chair:** It's in front of you.

**Mr. O'Toole:** Is it here? I'm sorry. I apologize.

**The Chair:** Our researcher is so efficient that he's already provided it to you.

**Mr. O'Toole:** Thank you very much, Andrew. It's a great job. You could probably look into this thing with the MTO, because Phil may get tied up in the politics of it all. Thanks very much.

**The Chair:** That completes our witnesses for today. I'd like to thank members and committee staff for their participation in the hearings.

*Interjections.*

**The Chair:** Committee, can I just have your attention for another 30 seconds? Then you can argue with each other.

I'd like to remind all the members that amendments to Bill 148 should be filed with the clerk by 12 noon on Friday, October 27. If you need any help with drafting the amendments, you need to speak to Susan Klein, who is leg counsel.

**Mr. O'Toole:** Is Susan Klein here?

**The Chair:** No.

This committee now stands adjourned until 3:30 p.m. on Monday, October 30, 2006, for clause-by-clause consideration of Bill 148. Thank you.

*The committee adjourned at 1634.*













## CONTENTS

Wednesday 25 October 2006

<b>Highway Traffic Amendment Act (Seat Belts), 2006, Bill 148, Mrs. Cansfield / Loi de 2006 modifiant le Code de la route (ceintures de sécurité), projet de loi 148, M<sup>me</sup> Cansfield</b> .....	G-859
Ontario Provincial Police Association .....	G-859
Mr. Karl Walsh	
Canadian Vehicle Manufacturers' Association .....	G-861
Mr. Mark Nantais	

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### Chair / Présidente

Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)

#### Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)  
Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)  
Mr. Kevin Daniel Flynn (Oakville L)  
Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)  
Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell L)  
Mr. Jerry J. Ouellette (Oshawa PC)  
Mr. Lou Rinaldi (Northumberland L)  
Mr. Peter Tabuns (Toronto–Danforth ND)  
Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### Substitutions / Membres remplaçants

Mr. Dave Levac (Brant L)  
Mr. Phil McNeely (Ottawa–Orléans L)  
Mr. John O'Toole (Durham PC)

#### Also taking part / Autres participants et participantes

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

#### Clerk / Greffière

Ms. Susan Sourial

#### Staff / Personnel

Mr. Andrew McNaught, research officer,  
Research and Information Services



G-35

G-35

ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 30 October 2006

# Journal des débats (Hansard)

Lundi 30 octobre 2006

**Standing committee on  
general government**

Highway Traffic Amendment Act  
(Seat Belts), 2006

**Comité permanent des  
affaires gouvernementales**

Loi de 2006 modifiant le Code  
de la route (ceintures de sécurité)



Chair: Linda Jeffrey  
Clerk: Susan Sourial

Présidente : Linda Jeffrey  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8. e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8 courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 30 October 2006

Lundi 30 octobre 2006

*The committee met at 1533 in room 151.*HIGHWAY TRAFFIC AMENDMENT ACT  
(SEAT BELTS), 2006LOI DE 2006 MODIFIANT LE CODE DE LA  
ROUTE (CEINTURES DE SÉCURITÉ)

Consideration of Bill 148, An Act to amend the Highway Traffic Act respecting the use of seat belts / Projet de loi 148, Loi modifiant le Code de la route en ce qui concerne le port de la ceinture de sécurité.

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The standing committee on general government is called to order. We're here meeting today for clause-by-clause consideration of Bill 148, An Act to amend the Highway Traffic Act respecting the use of seat belts.

Committee, I'd like to just bring to your attention that, besides the clauses you have in front of you, there is some research provided by research officer Andrew McNaught on your desk based on the recommendations. There's also an additional letter that was received today with regard to vintage cars that will clarify some wording changes.

**Mr. John O'Toole (Durham):** Just with the indulgence of the committee, I seek unanimous consent to introduce an additional amendment to section 3 of the bill, although it doesn't meet the criteria of the sub-committee for the timeline. With your indulgence, I'd introduce it. It would still come to a vote.

**The Chair:** It's my understanding that you do not need unanimous consent and you can put the motion on the floor for section 3, but if you could give us an opportunity to copy it and then we'll make sure that everybody has a copy of it by the time we get to section 3. So we'll get that done, and it's not until section 3, so we have a few motions before that.

Our first motion, Mr. O'Toole.

**Mr. O'Toole:** I move that subsection 106(3) of the Highway Traffic Act, as set out in section 1 of the bill, be amended by adding at the end "but may not receive any demerit points for failing to do so."

**The Chair:** Do you want to speak to your motion?

**Mr. O'Toole:** Yes. The purpose of this amendment is something I'm actually looking for in my notes. Pardon me for a second here. Okay. What it really is—just going by memory, this section is so that persons who are over

16 years of age would not, in addition to being fined, receive demerit points against their driving record.

**Mr. Phil McNeely (Ottawa–Orléans):** We don't feel it's necessary. There's no intention to assess demerit points against a passenger. The demerit point system is intended to apply to driving offences, not passenger offences, so there's no need. We will not support that motion.

**Mr. Peter Tabuns (Toronto–Danforth):** Could you tell me your reasoning, Mr. O'Toole?

**Mr. O'Toole:** Persons over the age of 16 with a driver's licence who would receive a ticket for failing to wear a seat belt would not, in addition to that, receive demerit points.

**Mr. Tabuns:** Why wouldn't you assess them demerit points? If it's unsafe or a danger to others—

**Mr. O'Toole:** It's been clarified by the parliamentary assistant—

**Mr. Tabuns:** I heard him.

**Mr. O'Toole:** —that it's not their intention to do that. Quite frankly, it is the responsibility of a licensed driver. It's one of the conditions of driving that—I didn't write this amendment.

**Mr. Tabuns:** Okay.

**Mr. O'Toole:** I'm just saying that it's an amendment we're moving and the purpose and explanation of it is as I've described.

**Mr. Tabuns:** Fine. Okay.

**Mr. O'Toole:** And it is going to be defeated by the government, and I understand that.

**The Chair:** Any further discussion? All those in favour of the motion? All those opposed? That's lost.

Our next motion is an NDP motion.

**Mr. Tabuns:** Very simply, the Ontario Safety League recommended that the driver should be making sure that all passengers in the car who are in a seat with a seat belt have that seat belt in place and operative before they drive. It puts the onus on the driver. I think that it was a reasonable recommendation and increases the chances that in fact everyone in the car will be belted in, so I move that amendment on that basis.

**The Chair:** Can you read the motion into the record?

**Mr. Tabuns:** I'm sorry, Madam Chair. It's been weeks.

I move that subsection 106(4) of the Highway Traffic Act, as set out in section 1 of the bill, be amended by



striking out “who is under 16 years old” in the portion before clause (a).

**Mr. McNeely:** Again, we do not support this. This amendment places the onus on a driver to ensure adult passengers are belted up. It’s already an offence against the driver for not ensuring a child passenger under 16 is belted in; that’s fine. Adult passengers should be responsible for themselves. That’s our position in this legislation and that’s what we will support as it is.

**Mr. Tabuns:** Recorded vote.

**The Chair:** A recorded vote has been requested. Any further debate?

### Ayes

O’Toole, Tabuns.

### Nays

Brownell, Duguid, Flynn, McNeely, Rinaldi.

**The Chair:** That motion is lost.

The next motion is a government motion.

**Mr. McNeely:** I move that clause 106(4)(b) of the Highway Traffic Act, as set out in section 1 of the bill, be struck out and the following substituted:

“that passenger is required by the regulations to be secured by a child seating system or child restraint system, and is so secured.”

**The Chair:** The only thing you left out was the (b) in the motion; there’s a (b) in that. Could you just repeat that sentence?

**Mr. McNeely:** I’ll add the (b) for that sentence, then, or do you want it all to be read?

**The Chair:** Just start with the (b), so it’s read properly into the record, please.

**Mr. McNeely:** “(b) that passenger is required by the regulations to be secured by a child seating system or child restraint system, and is so secured.”

1540

**The Chair:** Thank you very much. Any further debate? Mr. McNeely, did you want to expand on it?

**Mr. McNeely:** This amendment makes it clear that clause (a) refers to children eight to 16 and clause (b) to children under age eight without the need to refer to the regulations.

**The Chair:** Any further debate? All those in favour? All those opposed? That’s carried.

The next motion is a government motion.

**Mr. McNeely:** I move that subsection 106(5) of the Highway Traffic Act, as set out in section 1 of the bill, be struck out and the following substituted:

“How to wear seat belt assembly

“(5) A seat belt assembly shall be worn so that,

“(a) the pelvic restraint is worn firmly against the body and across the hips;

“(b) the torso restraint, if there is one, is worn closely against the body and over the shoulder and across the chest;

“(c) the pelvic restraint, and the torso restraint, if there is one, are securely fastened; and

“(d) no more than one person is wearing the seat belt assembly at any one time.”

The rationale for the motion: It prevents doubling up of passengers, particularly children, in one seat belt. That was brought up to us during the presentations the other day.

**The Chair:** Any further debate? Seeing none, all those in favour of the motion? All those opposed? That’s carried.

The next motion is Mr. O’Toole.

**Mr. O’Toole:** I move that subsection 106(6) of the Highway Traffic Act, as set out in section 1 of the bill, be amended by adding the following clause:

“(a.1) who is driving or is a passenger in an historic vehicle, as defined in section 7, that is not equipped with seat belt assemblies.”

The purpose here is to address the antique/authentic car restoration groups, as well as after-market modifications. This was brought to our attention by Mark Nantais and others during the hearings of this committee.

**Mr. McNeely:** We feel that this amendment is unnecessary because an exemption for these types of vehicles will be provided in the regulation. Clause (f) of subsection 106(8) is the authority to provide this exemption. In addition, the amendment is too restrictive because there are other vehicles that require a similar exemption, such as buses, and they will also be dealt with in the regulation.

**The Chair:** Any further discussion?

**Mr. O’Toole:** One of the general comments we would make, certainly at the conclusion, I suppose, is that under the regulations or permitting section, the minister’s power to make exemptions or regulations—we have a problem with that. It allows too much potential for exclusions or inclusions that aren’t clearly spelled out in the bill. This isn’t just specific to the vintage car issue. It’s in a general sense to the somewhat open opportunity for groups or classes to be exempt from the regulations. So we would encourage members—and I’ll be asking for a recorded vote—to deal with this and deal with any exemptions in a very specific, inside-the-bill kind of exemption. The school bus and other exemptions that exist today were clearly addressed within the hearings, and I think it would be clear from that discussion that all parties were in support of the industry’s position. So there you go.

**The Chair:** Any further discussion? Seeing none, a recorded vote has been requested.

### Ayes

O’Toole, Tabuns.

### Nays

Brownell, Duguid, Flynn, McNeely, Rinaldi.

**The Chair:** That motion is lost.

The next motion is yours, Mr. O’Toole.



**Mr. O'Toole:** I move that subsection 106(6) of the Highway Traffic Act, as set out in section 1 of the bill, be amended by striking out "or" at the end of clause (b), by adding "or" at the end of clause (c) and by adding the following clause:

"(d) who is actually engaged in farm work which requires him or her to travel in the back of a truck and the truck does not travel on a highway or at a speed exceeding 40 kilometres per hour."

The amendment is an effort to ensure that this bill does not have the unintended consequence of forcing groups like farmers to alter how they do business on their farm. While we want to ensure that farm work continues unimpeded, we do not want individuals to ride in the back of trucks in general. We feel that the limits placed in this amendment would ensure that the practice of riding in the back of a truck is not allowed.

**Mr. McNeely:** This bill focuses on the issue of seat belts in motor vehicles and is not intended to deal with the issue of riding in the back of pickup trucks. That issue will be the subject of consultations with the agricultural, construction and municipal sectors. We feel that's the proper time to address it.

**The Chair:** Further debate?

**Mr. O'Toole:** Just to be conclusive there, I have the assurance of the parliamentary assistant that there will be discussions with the Ontario Federation of Agriculture, the Christian farmers and the farmers' union to make sure that their views and methods of dealing with it would be exercised and reported back to the House.

**Mr. McNeely:** Our minister has said that there will be consultations—and there will be consultations—and we can describe those when they occur.

**Mr. O'Toole:** On a lighter note, I need to have confidence that this will happen prior to the election. As you know, even one of your members has had this as an issue as well as a former member, Doug Galt, and it shouldn't be kicked around. There was some pretty strong input during the hearings on this about eliminating any potential, under any circumstance, for a person to ride in the back of a pickup truck. I myself was listening quite clearly to that, and have made every effort to do as you're suggesting: consult with the federations, the representatives of various farm organizations. I'll be sending this transcript out primarily to those organizations. I don't mean that as a threat. I'm just saying, it's that important to have certainty, because some of this bill—the sections there that I'll deal with later in one of our amendments—is not going to be proclaimed until such time as the minister has time to. So you've got to do what you say. That's the issue here.

**Mr. McNeely:** The commitment has been made by the minister to go out to these groups, and that will certainly be part of the process. We're getting on with the important part of this legislation, but this one requires that additional consultation.

**The Chair:** All those in favour of the motion? All those opposed? That's lost.

The next motion is Mr. Tabuns.

**Mr. Tabuns:** I move that section 106 of the Highway Traffic Act, as set out in section 1 of the bill, be amended by adding the following subsection:

"Penalty

"(7.1) A person who contravenes subsection (2), (3) or (4) is guilty of an offence and on conviction is liable,

"(a) for a first offence, to a fine of not less than \$85 and not more than \$500; and

"(b) for each subsequent offence, to a fine of not more than \$2,000, and for the purpose of this clause, an offence under any of subsections (2), (3) and (4) is a subsequent offence if the person was previously convicted of an offence under any of subsections (2), (3) and (4)."

This is part of the initiative to make the driver responsible to ensure that everyone in the car is wearing a seat belt. It's consistent with the recommendations of the OPP, the Ontario Safety League and the presenter from POINTTS.

**The Chair:** Any discussion?

**Mr. McNeely:** Ontario has one of the highest levels of seat belt use in the country. These types of severe penalties are reserved for the most serious offences under the Highway Traffic Act, offences that pose the greatest risk to other road users, such as impaired driving, repeat excessive speeding offences and commercial vehicles that lose wheels on highways. Additionally, this amendment would increase burdens on police and court resources and require mandatory court appearances for second and subsequent offences. So we do not support this motion.

**The Chair:** Any further debate?

**Mr. Tabuns:** Recorded vote.

**Ayes**

Tabuns.

**Nays**

Brownell, Duguid, Flynn, McNeely, Rinaldi.

**The Chair:** That motion is lost.

Next motion, Mr. O'Toole.

**Mr. O'Toole:** I move that clauses 106(8)(e) and (f) of the Highway Traffic Act, as set out in section 1 of the bill, be struck out.

**1550**

The justification for that: Our party feels that the extensive regulatory powers this bill sets out for the minister are unnecessary. We don't agree that it should be solely up to the minister to exempt classes of vehicles, classes of drivers, passengers or actions from the bill with the stroke of a pen in the middle of the night.

My sense here is that that's how we got into this trouble. There was an omission, and I don't think it was deliberate, with respect to the purpose of this bill, which was a unanimous agreement by all parties for "one person, one seat belt." Yet we're now providing a circum-



stance or a mechanism where there can be exemptions. As I tried to state earlier, the exemptions should be dealt with in the bill, and I understand there are sections dealing with classes of vehicle today.

I think this time was set aside for the minister to deal with this important public safety issue in this bill. Quite frankly, I'm somewhat disappointed, although we're trying to move expeditiously, that we didn't take the time to address a couple of issues that have been timeless. One of them is the exemptions provision. I would asked for a recorded vote on this section.

**The Chair:** Any discussion?

**Mr. McNeely:** This amendment would remove existing exemptions in place in the regulation for emergency personnel such as firefighters, police and ambulance attendants, as well as taxicabs and correctional services vehicles. It would also remove the authority to place exemptions in the regulation for antique or historic vehicles and other vehicles not originally manufactured with seat belts, such as buses. So we feel that the way to go is with the way it is, and we do not support this change.

**Mr. Tabuns:** I sympathize with the motion by Mr. O'Toole. I don't like the idea of so much power being put into the minister's hand and issues being taken for granted in the legislation. But I would say, unfortunately, that I'm going to have to vote with Mr. McNeely on this because he's right: In practical terms, there would be problematic fallout if in fact the amendment passed. But Mr. O'Toole's correct to have moved the motion, because too much is left to regulation in the legislation we've had to deal with in the last while.

**The Chair:** Any further discussion? Seeing none, a recorded vote has been requested.

**Ayes**

O'Toole.

**Nays**

Brownell, Duguid, Flynn, McNeely, Rinaldi, Tabuns.

**The Chair:** The motion is lost.

The last motion for this section, Mr. McNeely.

**Mr. McNeely:** I move that the definition of "seat belt assembly" in the French version of subsection 106(9) of the act, as set out in section 1 of the bill, be amended by striking out "retenue à la hauteur du bassin ou une retenue à la hauteur du bassin et une retenue au sommet du torse" at the end and substituting "ceinture sous-abdominale ou une ceinture sous-abdominale et une ceinture diagonale".

This amendment is necessary to correct an inconsistency in the French wording that predated Bill 148 to ensure that the definitions are the same in both languages. So it's strictly translation.

**The Chair:** Any further discussion? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 1, as amended, carry? All those in favour? All those opposed? That's carried.

Section 2: a government motion.

**Mr. McNeely:** I move that subsection 106(8.2) of the Highway Traffic Act, as set out in section 2 of the bill, be amended by striking out "giving his or her correct name and address is reasonable identification" at the end and substituting "giving his or her correct name, date of birth and address is reasonable identification."

The rationale is that date of birth will assist the officer in ascertaining whether or not a passenger is 16 years of age or older for the purposes of laying a charge against an unbelted passenger. The driver would be charged if the unbelted passenger was under 16. So it's an added bit of information that will certainly assist in enforcing this legislation.

**The Chair:** Any discussion? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 2, as amended, carry? All those in favour? All those opposed? That's carried.

Section 2.1: There's a government motion on the table. I'll let you read it into the record, and then I'll make a statement about it.

**Mr. McNeely:** I move that the bill be amended by adding the following section:

"2.1 Clauses 207(2)(a) and (c) of the act are repealed and the following substituted:

"(a) subsection 106(2) or (4);....

"(c) a regulation or bylaw made or passed under a section or subsection referred to in clause (a) or (b) or under section 106; or'."

**The Chair:** I just want to notify committee that this amendment actually opens up section 207 of the Highway Traffic Act. This section was not previously opened in Bill 148.

Normally, amendments that open sections of the parent act not open in the amending bill are ruled out of order unless, without the amendment, the bill would contain an inconsistency or error, or create a conflict in terms of language or reference. For example, a motion changing a reference to a section, subsection etc., where the reference is no longer accurate, would be in order.

Having reviewed the amendment and consulted with the clerk of the committee and legislative counsel, I've decided that this amendment satisfies the exception mentioned above and that without this amendment, Bill 148 would create a conflict in terms of language or reference.

That's just for clarification. Any comments on this motion?

**Mr. Tabuns:** I don't fully understand the import of the amendment, so perhaps the parliamentary assistant could help.

**Mr. McNeely:** Would you like to hear that from legal? We have a legal representative here.

**Mr. Tabuns:** Sure.



**The Chair:** If you could say your name and who you represent for the record.

**Ms. Mary Preiano:** My name is Mary Preiano. I'm counsel with the Ministry of Transportation. Sorry, the question again, please?

**Mr. Tabuns:** What does this amendment do?

**Ms. Preiano:** This merely corrects a cross-reference in section 207 to the re-enacted subsection references in 106 when this bill passes.

**Mr. Tabuns:** The only note I have from my staff is that it would be problematic in terms of imposing fines on drivers.

**Ms. Preiano:** This section essentially allows a driver charge to be converted to an owner charge. But there is an exception for charges under 106, so driver charges are not permitted to be converted to owner charges. This amendment is purely consequential to ensure that the reference to the offence provisions in the remade section 106 is consistent.

**Mr. Tabuns:** Okay. Thank you very much.

**The Chair:** Any further discussion?

**Mr. O'Toole:** I appreciate the explanation. I understand that the violation comes up later in the identification of persons who are—if they fail to give the proper identification, that's an issue too for the OPP. They can't be passed on to the owner of the vehicle.

**Ms. Preiano:** No.

**Mr. O'Toole:** The fine or the demerits.

**Ms. Preiano:** For a passenger offence—

**Mr. O'Toole:** Say it was my son or daughter driving the vehicle—because of bad information being provided? Is this what it's doing? Is it making sure that it's only the driver of the vehicle?

**Ms. Preiano:** No, this is purely consequential to ensure that the section references currently in place in section 207 refer to the same provisions in 106 after this bill comes into force.

**Mr. O'Toole:** That's fine. Thank you.

**Mr. McNeely:** If you could you stay at the table, that would be fine. We may require your services.

**The Chair:** I don't mind. Yes, you can stay.

Any further comments or questions on the motion? All those in favour of the motion? All those opposed? That's carried.

Shall section 2.1, as amended, carry? All those in favour? All those opposed? That's carried.

Section 3: It's a government motion.

**Mr. McNeely:** I move that subsection 3(2) of the bill be struck out and the following substituted:

“Same

“(2) Sections 1, 2 and 2.1 come into force on a day to be named by proclamation of the Lieutenant Governor.”

1600

Having the legislation be in force on proclamation will assist in permitting a smooth transition for the purposes of enforcement and education. The transition time is essential to permit new short-form wordings to be established and a set fine issued so the police can continue issuing tickets for seat belt offences, as opposed to re-

quiring persons charged and the charging police officer to appear in court.

**The Chair:** Any comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

**Mr. O'Toole:** you have the next motion.

**Mr. O'Toole:** I move that section 3 of the bill be struck out and the following substituted:

“Commencement

“3. This act comes into force on the day it receives royal assent.”

I'm not sure if this has any conflict with the previous government motion. I'd have to beg leave for legal counsel's interpretation. The Ontario Provincial Police, in its October 23 presentation, requested that the entire bill should come into effect at royal assent. As the bill is currently written, the provision relating to passengers identifying themselves does not come into force and effect until some unknown date when the LG proclaims it. We agree with the OPP on the need to be given the tools to do their jobs, to move quickly in an effort to avoid further tragedies or confusion.

It's on that basis; I'm not sure if the previous amendment dealt with the proclamation—

**The Chair:** Would you like some clarification, Mr. O'Toole?

**Mr. O'Toole:** Sure.

**The Chair:** We're seeking clarification whether or not—

**Mr. O'Toole:** Two questions: (1) Does it conflict with the previous government motion? (2) Since it's now the bill, is mine redundant?

**The Chair:** Okay. We're working that out.

I'm being told your motion is out of order.

**Mr. O'Toole:** I guess, for a point of clarification, before it comes to the—

**The Chair:** Would you like to talk to legislative counsel about that?

**Mr. O'Toole:** Yes. Because this motion has been ruled out of order, I can't speak to that motion, so I'll just speak to the one we've already passed. I should have intervened then, really, to clarify.

What I'm concerned about is the OPP's comment on this whole idea of persons identifying themselves. There was a subsequent request for information made by myself, asking when the government is going to make available the proper tools, i.e., the MTO database, which includes pictures, so they can positively identify people who, rightly or wrongly, are failing to disclose who they are; you know, false identification, people who are in the vehicle. Do you follow me? That came up during the hearings, Mr. McNeely. I guess that, when you don't proclaim a section, it doesn't give the police clarity in enforcement. That's what they were saying to us. They're going to spend a lot of time chasing down and issuing legal documents to ascertain who people are. I think you follow me.

**Mr. McNeely:** I think we certainly agree that giving the police more capacity to identify through the driver's



licence photo is very important. You have the written response on that. This kind of motion would create a gap in the ability of police to issue tickets until a short-form wording and set fines have been established. With our amendment today, I would recognize the problems that were brought forward the other day during those presentations. We feel that that is going to work quite well, that everything will come together at the right time.

If you wish to ask questions of legal, they certainly would be able to add additional information.

**Mr. O'Toole:** Perhaps legal counsel. My point is that the OPP made their request during the meetings that this would be an administrative problem for them: first of all, the identification process, because if they had the MTO files, they could easily do a search on name and match pictures to the actual licence, the photo on the driver's licence. They can't do that with the database they have today, which doesn't include the picture. So if somebody discloses the wrong name, they don't know if it's "John Smith" or not. They've then got this additional public money being spent on trying to find out who in fact the person was, that fourth person in the vehicle or whatever, without the seat belt. Do you follow me? It's sort of administrative.

What they want, clearly, is the data shared—the parliamentary assistant hasn't made it clear to us whether that's going to be done—and then to streamline the administrative portion for the OPP. They should be able to say, "You've got a ticket and you are John Smith," or whatever your name is, and then go back their cruiser and verify it. Today they could actually go back to their cruiser and determine whether or not you have outstanding tickets. They can see it all right there on whatever that database they have is called. I suspect that you or someone in your staff knows that. They can go back to the cruiser today and they'll know if you have outstanding speeding tickets, other demerit points, they'll know that you're driving with a suspended licence, but they can't tell that it's actually Brad Duguid. Somebody could wrongly use your name, see?

**Mr. Brad Duguid (Scarborough Centre):** Probably.

**Mr. O'Toole:** Somebody could wrongly use your name or you could have some false identification.

**The Chair:** Mr. O'Toole, are you asking a question to a specific individual?

**Mr. O'Toole:** Well, yes. What's the case here? What do the OPP do, according to the way you have redrafted the bill under your government motion?

**Ms. Preiano:** Under the motion that was just passed, all the substantive provisions of the bill would come into force on proclamation. That would enable us to get regulations in place to establish short-form wordings and to ask the Chief Justice to issue set fines, so the people can continue to enforce seat belt offences by way of tickets as opposed to requiring mandatory court appearances for everyone charged. That's what the motion—

**Mr. O'Toole:** Thank you. I have a duty to be on the record. I've done it. They're the government; they win every vote. We lose them all.

**Mr. Lou Rinaldi (Northumberland):** Good job, John.

**Mr. O'Toole:** I've done my job, and my constituents know I'm working hard for them. Thank you very much.

**The Chair:** Thank you, committee. I thought that when we received Mr. O'Toole's amendment, it was in section 3. In fact, I'm being told it's in section 1, so it will not be dealt with at this point. We can go back to section 1 after we've dealt with section 3, just so you know I haven't forgotten. But it's in the wrong order.

Shall section 3, as amended, carry? All those in favour? All those opposed? That's carried.

In order to go back to deal with the motion that Mr. O'Toole put forward, it's my understanding, because we have passed section 1 as amended, that we need unanimous consent to reopen the section prior to discussing the amendment.

*Interjections.*

**The Chair:** We have unanimous consent to reopen section 1 to discuss it. Mr. O'Toole, you have the floor.

**Mr. O'Toole:** I'd like to thank our legislative research person, Alain, for the job that he [*inaudible*] all weekend. I bring this to your attention and thank you again for allowing me to just put it on the record.

The amendment to 106(3):

"Amend this section to prohibit children under the age of 12 from riding in the front passenger seat of a vehicle in which a front, passenger-side airbag system is installed and active."

The explanation here is that the Insurance Bureau of Canada and other things aren't dealing with seat belts. This is actually restraining seats that are being dealt with, and I understand you may not—but I want to put on the record that there are more injuries caused by the impact of airbags being discharged with infants and other young children in front seats of vehicles. This has been the subject of some CBC reports. I think it goes beyond the scope of this bill and these hearings, but in your review, parliamentary assistant, I would suspect it's something they should probably consider. We've gone to some considerable expense and trouble to increase booster seats for certain children's weights and heights and find out what is technically the safest possible position for children to be in. We've done a lot of work on that, and I commend us for doing that. But, again, this is the point I've amended, and you can call it or you can respond to the question, if you'll deal with it or not, because it's not in the bill. Do you follow me?

1610

**The Chair:** Mr. O'Toole, just so I'm correct in my job as Chairman, I need you to use different language in order to move the motion, because right now, the way you've read it in, it isn't actually a motion. Just so we make sure it's accurately recorded.

**Mr. O'Toole:** Now I have to thank legislative counsel for helping me. Alain, thank you.

*Interjections.*

**Mr. O'Toole:** Well, he didn't really help me, obviously. I'm only kidding. Because he did help me out by

trying to draft this amendment, but of course, it's legislative counsel that drafts the amendments, not members. That's the clarification.

I read it as follows: I move that section 106 of the Highway Traffic Act, as set out in section 1 of the bill and as amended by the committee, be amended by adding the following subsection:

“Front seat use

“(3.1) No passenger under the age of 12 shall occupy a seating position in the front seat of a motor vehicle if the front passenger-side airbag system is installed and active.”

**The Chair:** Does anybody on committee want a copy of this motion prior to voting on it? You don't have a copy of this motion. What you have is not exactly the same, so I'm offering—does committee want a copy of that before you vote on it?

*Interjection.*

**The Chair:** Okay. Just so you understand.

**Mr. O'Toole:** Just a small word. Do members understand the intent here? It's young children as passengers in the front seat, and the amendment is technically forbidding them to ride in the front seat passenger-side, period.

**The Chair:** Any questions of the mover?

**Mr. Tabuns:** Not so much a question. I understand that Mr. O'Toole is acting to increase safety. My concern with the amendment is, I wouldn't mind having a bit more technical report from staff before we pass on it. It does strike me—and this is to the parliamentary assistant—a lot has come up in the course of these hearings—technological change, the change in other jurisdictions around the world—that say to me that a lot more work is needed on the whole subject of passenger safety. I know what you wanted to do with this bill; your intentions were good. We've got a problem, we need to move on it and we need to move on it quickly. That's a positive thing. But the amendment that Mr. O'Toole has put forward raises the whole question about reviewing these acts and dealing with the changed context within which we operate.

**Mr. McNeely:** Just a response. We agree with you that the safety of children is very important. If they're in the front seat of the vehicle, this is something that should be considered. But are we talking about age or weight, is what we should be considering. There's other legislation. So I think at this time we would not support this motion.

**Mr. O'Toole:** I would just ask on the record that you direct this to the minister's attention and the other processes with the agricultural sector and others; you may pass it by the safety league, the safety council, CAA and others to see if it's the appropriate thing to do. I thank you for the time given to this amendment.

**Mr. McNeely:** We'll give you that undertaking.

**Mr. Duguid:** Just for what it's worth, Madam Chair, as well, in putting things on the record, I find it hard to believe that vehicle manufacturers still manufacture new vehicles without the ability to switch the airbags on and off in the passenger seat. Obviously, they still are, at least recently, in that position. If any vehicle manufacturers are reviewing these particular hearings, it's something that I would certainly want to bring to their attention. There really shouldn't be any cars made today where you don't have the option to turn on and off the airbags. Unfortunately, I suspect there still are.

**The Chair:** No further debate? Shall the motion carry? All those in favour? All those opposed? That's lost.

We're at section 4. Shall section 4 carry? All those in favour? All those opposed? That's carried.

Shall the title of the bill carry? All those—

**Mr. O'Toole:** Recorded vote.

**The Chair:** On the title of the bill? Okay.

### Ayes

Brownell, Duguid, Flynn, McNeely, O'Toole, Rinaldi, Tabuns.

**The Chair:** That's a unanimous vote. I like those. Thank you. That's carried.

Shall Bill 148, as amended, carry? All those in favour? All those opposed? That carried, just by a smidge.

Shall I report the bill, as amended, to the House? All those in favour? All those opposed? That's carried.

Committee, this concludes our consideration of Bill 148. I'd like to thank all my colleagues on the committee for their hard work and speed on this bill. I'd like to thank the staff and the members of the public who contributed to this committee's work. This committee now stands adjourned.

*The committee adjourned at 1616.*









## CONTENTS

Monday 30 October 2006

<b>Highway Traffic Amendment Act (Seat Belts), 2006, Bill 148, <i>Mrs. Cansfield</i> / Loi de 2006 modifiant le Code de la route (ceintures de sécurité), projet de loi 148, <i>M<sup>me</sup> Cansfield</i>.....</b>	<b>G-865</b>
---	--------------

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### Chair / Présidente

Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)

#### Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)  
Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)  
Mr. Kevin Daniel Flynn (Oakville L)  
Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)  
Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell L)  
Mr. Jerry J. Ouellette (Oshawa PC)  
Mr. Lou Rinaldi (Northumberland L)  
Mr. Peter Tabuns (Toronto–Danforth ND)  
Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### Substitutions / Membres remplaçants

Mr. Phil McNeely (Ottawa–Orléans L)  
Mr. John O'Toole (Durham PC)

#### Also taking part / Autres participants et participantes

Ms. Mary Preiano, counsel, legal services branch,  
Ministry of Transportation

#### Clerk / Greffière

Ms. Susan Sourial

#### Staff / Personnel

Ms. Susan Klein, legislative counsel

16  
3



G-36

G-36

ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 15 November 2006

# Journal des débats (Hansard)

Mercredi 15 novembre 2006

**Standing committee on  
general government**

Municipal Statute Law  
Amendment Act, 2006

**Comité permanent des  
affaires gouvernementales**

Loi de 2006 modifiant des lois  
concernant les municipalités



Chair: Linda Jeffrey  
Clerk: Susan Sourial

Présidente : Linda Jeffrey  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 15 November 2006

Mercredi 15 novembre 2006

*The committee met at 1610 in room 151.*

## SUBCOMMITTEE REPORT

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The standing committee on general government is called to order. We're here today to commence public hearings on Bill 130, An Act to amend various Acts in relation to municipalities.

Our first order of business is the adoption of the subcommittee report. Could I have someone move and read the report? Mr. Duguid.

**Mr. Brad Duguid (Scarborough Centre):** I guess I'll just read the report straight out. Is that what you'd prefer?

**The Chair:** Yes.

**Mr. Duguid:** Your subcommittee on committee business met on Wednesday, November 1, 2006, and recommends the following with respect to Bill 130, An Act to amend various Acts in relation to municipalities.

(1) That the committee hold up to five days of public hearings in Toronto on November 15, 20, 22, 27 and 29, 2006, from 4 p.m. to 6 p.m.

(2) That the committee hold two days of clause-by-clause consideration on December 4 and December 6, 2006, from 3:30 p.m. to 6 p.m.

(3) That the committee clerk, with the authority of the Chair, post information regarding the committee's business on the Ontario parliamentary channel, the committee's website and one day in the *Globe and Mail*, the *London Free Press*, the *Ottawa Citizen*, the *Sudbury Star* and the *Thunder Bay Chronicle Journal*. The ads are to be posted as soon as possible.

(4) That interested people who wish to be considered to make an oral presentation on Bill 130 should contact the committee clerk by 3 p.m. Thursday, November 9, 2006.

(5) That on Thursday, November 9, 2006, the committee clerk supply the subcommittee members with a list of requests to appear received (to be sent electronically).

(6) That, if required, each of the subcommittee members supply the committee clerk with a prioritized list of the names of witnesses they would like to hear from by 6 p.m., Thursday, November 9, 2006, and that these witnesses must be selected from the original list distributed by the committee clerk to the subcommittee members.

(7) That the committee clerk, in consultation with the Chair, be authorized to schedule witnesses from the

prioritized lists provided by each of the subcommittee members.

(8) That if all groups can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties and no party lists will be required.

(9) That late requests be accommodated on a first-come, first-served basis as long as there are spaces available.

(10) That groups and individuals be offered 15 minutes in which to make a presentation (10 minutes for the presentation and five minutes for questions from the committee members).

(11) That the research officer prepare an interim summary of witness presentations by Wednesday, November 29, 2006, and a final summary by Friday, December 1, 2006.

(12) That the deadline for written submissions be 5 p.m., Wednesday, November 29, 2006.

(13) That the deadline (for administrative purposes) for filing amendments be Friday, December 1, 2006, 12 noon.

(14) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Chair:** Any comments or questions?

**Mr. Michael Prue (Beaches-East York):** I was a member of the subcommittee and agreed to the terms and conditions. However, Madam Chair, as you are aware, the dates of November 15, 22 and 29 are problematic for me in my capacity as one of the assistant Deputy Speakers. It was agreed that on Wednesdays, if we were to meet, you would use your good offices to arrange for a substitute for me in the chair. When I approached you yesterday—you did try your best; I'm not saying anything against you—the chief government whip refused. I am therefore in the untenable position of having to ask the committee to cancel the dates of November 22 and 29, because if they are not going to provide a substitute for the chair, I must be in the chair, and I refuse to allow that there is no member of the New Democratic Party here.

**The Chair:** Mr. Prue, I understand you're moving an amendment.

**Mr. Prue:** I move the amendment, yes.

**The Chair:** Any comments or discussion?



**Mr. Duguid:** I'm a little hesitant to cancel committee meetings. They've probably been advertised, have the not?

**The Chair:** They've been advertised and we have scheduled speakers.

**Mr. Duguid:** I'm very hesitant to cancel advertised committee meetings. I understand, though, what Mr. Prue is trying to accomplish. I would have hoped that we could have found a sub to assist.

**Mr. Prue:** It was an outright refusal by the whip's office. I don't know what you expect me to do. I agreed to this in good faith and the Chair is indicating yes.

**Mr. Duguid:** I understand the motion. I'll be voting against it; however, I would undertake to see if we could resolve the issue in another way. I'd be happy to make some overtures on your behalf.

**The Chair:** Mr. Hardeman.

**Mr. Ernie Hardeman (Oxford):** Thank you, Madam Chair. I apologize for being a little late, but my office is three floors away and it takes a couple of minutes to get up and back.

I just wanted to point out—and we're talking about cancelling the days of hearings. I know from a presentation that one of my municipalities had put forward—they wanted to present—they can't present at that time and it couldn't be changed because everything else was locked in. So with a change of days, I would suggest that, if we don't have those two, we have two somewhere else; that we move the two days of committee that need to be moved to the clause-by-clause and that we do the clause-by-clause the following week.

I would agree with the New Democratic member. It was quite clear at the subcommittee meeting that he could not be there those two days. I think he was left with the assurance—at least the feeling of assurance—that the chair upstairs would be looked after for those two days. I really don't see how anybody in good conscience could say, "No, no. We've got this far, and we're not going to accommodate the New Democratic Party for this." I would support the motion.

**The Chair:** Further debate?

**Mr. Duguid:** I guess there might be two ways we can deal with this, and I don't mind either way. I'll ask Mr. Prue to choose. If we stood this down to give us an opportunity to see if we can resolve his difficulties, I'd be happy to undertake, probably later today or tomorrow, to try to do that, and then deal with the motion at that time, or we could certainly deal with the motion now and then I would still undertake to do it. But my preference would probably be to defer the motion until we've had an opportunity to see if there is a way we can resolve this difficulty.

**Mr. Prue:** I certainly have no difficulty. We are meeting on the 20th, which is a Monday. I am not in the chair at that time. I will be here at the meeting, as I have agreed to be. I am, though, reluctant—if the answer comes back no, I still intend to put the motion forward, if I cannot be accommodated, because this was all entered into in complete good faith. The government office

assured me that from a very large government contingent of some 70 members there would be someone to sit in there for those three Wednesday afternoons. As it is, I was able to get the Deputy Speaker to sit in for an hour and one of the assistant Deputy Speakers to sit in for the other hour this afternoon, but I cannot ask them to do that next Wednesday and the Wednesday after that as well.

I anticipated this problem. That's why the agreement was made, and it was broken. But if we come back next Monday and it has not been resolved, and if my motion were to succeed, then what do we do with the people who are going to be coming on those following Wednesdays? You're literally cutting it off with one day's notice. I'm trying to be amenable here. I am trying to see whether some compromise can be worked out. I was appalled when the answer came back through the good offices of the Chair that the answer was a flat-out refusal after that had been agreed to.

**The Chair:** Committee, I'm trying to get some clarification on whether we can proceed without approving the subcommittee minutes.

**Mr. Duguid:** Oh, I see what you mean.

**The Chair:** I think we have to resolve part of it.

**Mr. Duguid:** Can I just ask—I hate to do this—for a 10-minute adjournment? I've just been handed a note and maybe there's a way I can resolve this before we start. I don't have any information other than a request to suggest that we adjourn for 10 minutes. Would that be okay?

**Mr. Prue:** If you can do it faster than that. I don't want to be—okay, sure.

**The Chair:** We have to resolve this. We can't go forward without these—

**Mr. Duguid:** My apologies.

**The Chair:** We'll have a 10-minute recess.

*The committee recessed from 1619 to 1628.*

**The Chair:** Can we resume public hearings on Bill 130, An Act to amend various Acts in relation to municipalities? Mr. Prue.

**Mr. Prue:** Upon the assurance of the parliamentary assistant that they will endeavour to fix this problem before next Wednesday, I would withdraw my amendment.

**The Chair:** Any further comments or debate on the summary of decisions made at subcommittee? Seeing none, all those in favour? Carried.

## MUNICIPAL STATUTE LAW

### AMENDMENT ACT, 2006

#### LOI DE 2006 MODIFIANT DES LOIS CONCERNANT LES MUNICIPALITÉS

Consideration of Bill 130, An Act to amend various Acts in relation to municipalities / Projet de loi 130, Loi modifiant diverses lois en ce qui concerne les municipalités.

**The Chair:** Now we begin the public hearing portion of our hearings. Mr. Hardeman.

**Mr. Hardeman:** I have a motion I'd like to move before we start the public hearings. I think the clerk is



passing out a copy of the motion to make sure that the committee has the motion.

Before I read the resolution, I just wanted to point out that the Ombudsman has requested to be heard by the committee but feels he needs more than the 15 minutes. I move this because there is sufficient time on the calendar that we have just passed in the subcommittee report.

I move that the Ombudsman be given an additional 15 minutes and that this additional 15 minutes be taken after the last presenter of the day.

**The Chair:** Comments or questions?

**Mr. Duguid:** I just have this motion in front of me now, and I'm afraid I have some difficulties with supporting this at this time. I totally appreciate and welcome the input of the Ombudsman; in fact, the input has been extensive. The Ombudsman has taken the time—again, we appreciated it—to meet with the minister, to meet with the Premier on his concerns about the bill. We are definitely taking those concerns seriously. We're taking a very hard look at them.

A 15-minute presentation will give the Ombudsman, I believe, adequate time to outline his concerns, and I assume he'll be giving us a written presentation which will enable us to look at those concerns in greater detail. Should the committee, down the road, feel it wishes to have more information from him, I'm sure we could request that, but for the time being, I think the committee is quite capable of reading submissions.

I guess the major concern I have, frankly, is that the major stakeholder on this bill is AMO. AMO, really, has jurisdiction and interest in every clause within this bill; the Ombudsman's role is a couple of sections of the bill. I would have concerns about giving one party unequal opportunity to make a presentation where AMO and others as well don't have that same opportunity.

So I appreciate the request. I think the committee can more than sufficiently do its due diligence in hearing from the Ombudsman for an allotted amount of time equal to all other presenters. As I said, we can always leave the door open as the committee hearings go on. If the committee felt we needed more information from the Ombudsman, we could certainly make that request.

**Mr. Hardeman:** I believe this is going to take considerable debate, and our delegations have waited long enough. So I ask that we defer further debate on this motion till after we've heard from the delegations and then return to this. I believe that it's important to recognize that everyone coming in will talk about how the bill will benefit them. The Ombudsman has the opposite view, and I think maybe the only one who has that opposite view, of what it will do to the people of Ontario. So I think more debate is required on this issue.

**The Chair:** Thank you very much.

#### ASSOCIATION OF MUNICIPALITIES OF ONTARIO

**The Chair:** We'll move on to the public portion of our meeting. The first group appearing before us is the Association of Municipalities of Ontario, if they could

come forward—Mr. Doug Reycraft, president. Welcome. I know you've been here before and you're experienced, but I still have to go through the drill. You have 15 minutes. If you could state your names, if you're both going to be speaking, your titles and the organization you speak for, and when you begin you'll have 15 minutes. If you leave us some time at the end, there'll be an opportunity for questions and comments.

**Mr. Doug Reycraft:** Thank you, Madam Chair. My name is Doug Reycraft. I'm mayor of the municipality of Southwest Middlesex and president of the Association of Municipalities of Ontario. With me this afternoon is Pat Vanini, AMO's executive director. I'll try to get my comments in in about 10 minutes so that we leave five minutes for questions.

AMO will be submitting a more comprehensive document that sets out all of our amendment requests. It will also highlight some key matters that we believe should not be changed because the provisions are good public policy and reflect the spirit upon which this bill was formulated; that is, that municipalities are a mature order of government.

When Bill 111, the 2001 Municipal Act, was introduced, it was the first major overhaul of this core legislation. Bill 111 was a positive move and was much better than the 1998 draft act. Bill 111 was not the complete framework that we envisioned, but it was a better starting point. We also stated that we hoped the act would continue to evolve over time. That was during the November 21, 2001, hearings. Almost five years to the day, we are here again. We support Bill 130 as another very positive step in the evolution of the Municipal Act. We are here to make it the last step.

This committee has the opportunity over the coming weeks to make Ontario the leader in this nation when it comes to truly allowing municipal governments to govern. It is time to say loud and clear that municipalities are, without doubt, mature orders of government.

The public expect and want all three orders of government to collaborate, but successful partnerships demand clarity on roles and responsibilities. Accountability rests on that clarity. It does not rest with the province second-guessing municipal governments. There will be some shared interests, but how all orders of government choose to deal with them is what makes the difference. That is why we are asking for amendments to this legislation that articulate the provincial interest.

Municipalities have already demonstrated, by their responsible use of the powers included in the current act, that they are mature and accountable. They have already demonstrated that oversight provisions such as section 184 of the bill are unnecessary and inappropriate. Municipalities will employ the broad powers that are included in this proposed bill in an equally responsible manner.

The granting of broad powers and broad interpretation is most welcomed. It recognizes where the courts have landed. It is an important statement. However, section 184 is too open-ended and much too one-sided. It does not put any rigour into the relationship. Without some



clarity on the nature a provincial interest could take, it may be very difficult for municipal governments to do what the broad powers intend to provide or to do so with comfort.

We believe that the province can articulate provincial interests, for example, if there's a direct cost to the province. The province has had no problem in articulating its interests when it comes to land use planning. We believe that this bill deserves the same commitment to articulation so that greater predictability of actions results for each of us. This section in the bill is an overwrite provision that is not grounded nor scoped.

Once a council takes a policy decision, it's up to municipal administration to implement it, which may require procurement and the signing of contracts. How will this unfold when the status of the bylaw could be questioned by the province? What will be the cost of undoing something if the province declares a provincial interest and subsequently imposes a regulation? And if there is an overwhelming provincial interest, should the province not act faster than 18 months? This committee has the collective experience to scope the provincial interest through an amendment, and we are willing to assist you in doing that.

There are some other parts of the bill that run shy of recognizing municipalities as mature and responsible. There remains regulatory authority: for example, licensing and corporations. There are a number of changes that remove the micromanagement approach of the current act, such as a licensing registry, but a great deal of provincial regulatory power remains. It would be a welcomed move for the province to pre-state what would not be permitted for incorporation rather than the current case-by-case, specific approach.

Also of concern is how to implement the requirement for municipalities to adopt policies to "ensure that the rights, including property and civil rights, of persons affected by its decisions are dealt with fairly." The other policy areas in section 111 of the bill make sense and are understood, but this particular one brings too much uncertainty. How would a municipal policy interact with the existing Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code? I think you will agree that we have a collective onus to make sure legislation does not take away or confuse existing rights.

We would recommend that subsection 270(1.6) be deleted in the absence of the ministry articulating what such a policy could and could not look like. Passing legislation that does not have a clear and practical implementation is not good public policy. Perhaps the province might want to test drive this policy internally first.

AMO strongly supports this bill's coming into force January 1, 2007, and expects that the Legislature will make this happen in a collaborative manner. Councils need the time, however, to prepare and consult with the public and then approve the various required policies in section 111 of the bill as we'd like it amended. This will take some time, so proclamation of this section should be delayed until 2008.

Let me address the open meetings component of the bill. As fellow politicians, you understand how important it is to be able to properly understand an issue before you put it to the public, let alone debate it in public. In fact, I expect each of you has had some time with staff to understand this particular bill. As caucuses, you've spent time learning about technical matters such as restructuring the electricity sector, for example, a very complex situation. When elected, your caucuses go to school to learn about government rules and processes. You get to ask the dumb questions, knowing that they won't be used publicly.

Like you, municipal councillors need the opportunity to do their homework and ask questions of staff so that they can better engage the public. AMO is pleased that this bill will allow such discussions as one of the closed-meeting considerations. You will hear from the provincial Ombudsman that he might seek oversight of Ontario's 445 municipal governments. I respect his principles about how an ombudsman's role in authority should be clear.

1640

A proposal to impose a provincial Ombudsman on municipal governments, however, would offend the spirit of Bill 130. The office of a provincial Ombudsman does not have a monopoly on integrity, nor is the province superior to municipalities when it comes to openness, transparency and accountability. Rest assured that if it is appropriate for the provincial Ombudsman to be appointed and paid by the provincial government, it is appropriate for a municipal ombudsman to be appointed and paid by a municipal government; if the provincial Ombudsman can be trusted to carry out his responsibilities, a municipal ombudsman can be trusted to carry out his or hers; and if the province can be trusted to respect the work of an ombudsman, Ontario's municipalities can be trusted to respect theirs. As professional organizations, it is in our collective best interest to do so.

The goal is valid. I simply believe that it can be achieved without having to resort to a provincial model run out of Queen's Park.

This presentation has centred on three values: trust and respect, accountability and predictability. Bill 130 can set a true, value-based framework that says that our respective governments are working together. The days of micromanagement, of one-size-fits-all, of over-legislating and over-regulating must be over. That is the challenge and that is the opportunity.

**The Chair:** You've left about two minutes for each party to ask questions, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you for the presentation. There are a couple of areas I just wanted to go to. First of all is the issue of the corporations and the ability of municipalities to incorporate special corporations to provide certain services for themselves or for others. I've had some concern expressed that municipalities may actually go into the private sector business world to set up a corporation to go into the constructing of roads and bridges



for themselves and for others. Do you see that as a possibility for a municipal government as this is written?

**Mr. Reycraft:** I don't think it's the intention of municipal governments to form businesses that will compete with the private sector to do work in both private and public sectors. I've not heard that from any of my municipal colleagues. I don't believe it to be the case.

**Mr. Hardeman:** But do you think it's possible in this bill?

**Mr. Reycraft:** It's probably something that's more likely to be addressed through the regulations that will be enacted under the bill. But if there's a need to clarify something like that to prevent municipalities from doing that sort of thing, then I don't think we'd have any objection to such amendments.

**Mr. Hardeman:** The other issue is the open meetings portion of the bill. You deal quite extensively with that. It is your contention in your presentation that this bill does expand the ability of council to have closed meetings. Is that right?

**Mr. Reycraft:** Yes, it does. It would allow municipal councils to have closed meetings to receive briefings from staff members to deal with technical information and have an opportunity to have discussions around various issues. But it does preclude them from making decisions in closed sessions regarding those kinds of issues.

**Mr. Hardeman:** I just wanted to point out—

**The Chair:** It has to be a really quick question.

**Mr. Hardeman:** We've just gone through a municipal election and I've seen a lot of debates, and have watched them fairly closely, about what the incumbents were going to do or stand for and what the challengers were going to do and stand for. I never heard one mention that what they really thought municipalities needed was more closed meetings to have discussions away from the public. I wonder why, then, the representatives of municipalities after the election would support having that put in place, to have more closed meetings.

**Mr. Reycraft:** We've certainly heard from our members that they support this particular part of Bill 130. We believe that municipal governments at the present time are by far the most transparent, open and accountable order of government in the country. I'm certainly aware of the opportunity for provincial parties to have caucus meetings to deal with issues which are of a nature that they're not yet ready to debate in public, and we think municipal governments should have that same opportunity.

**The Chair:** Thank you, Mr. Prue.

**Mr. Prue:** Just questions on that same thing, an open and accountable government: Having been a former mayor and councillor over many, many years, I don't ever remember having open meetings being a bone of contention or a difficulty. I don't ever remember anybody complaining that they had to ask dumb questions in public. I don't remember the public ever being upset, except when we went behind closed doors. I'm just flummoxed that you are taking this position.

**Mr. Reycraft:** Well, I'm not sure how much more I can tell you than I told Mr. Hardeman in my last response. I would suggest to you that a councillor might want to ask what is perceived to be a dumb question, and being required to do that only in an open session of council might discourage them from doing so.

**Mr. Prue:** All right. Another provision here in the bill which you haven't talked about but with which I'm intrigued is allowing members of municipal council to vote when they are not present. They can vote if they're on a beach in Acapulco, phone up and say, "I vote yes." That's just one example of what can be done.

What's AMO's position on that? Should councillors be allowed to vote from somewhere else in the world if they're not present at a meeting? It's in the bill.

**Mr. Reycraft:** Certainly, technological and communication advances make it possible now for councillors to join meetings either by teleconference or by audiovisual conference. The section of the bill would allow those who do that to vote as part of the meeting. I think it's a practice that's becoming more and more common within the business sector, within the private sector, and one that would allow municipal councillors who were, for whatever reason, away from a particular council meeting—in fact, I've got a council meeting going on in Southwest Middlesex at the present time. It would allow me the opportunity to join that meeting and to vote on a resolution that was put forward by a member of the council.

**Mr. Prue:** This would be, then, the only level of government that would allow it. If I'm not in my seat in the Legislature when the vote comes up, I can't phone it in. I'm sure the same thing is true of my colleagues in the House of Commons. Why is this good law for municipal councillors and mayors and bad law for other levels of government?

**Mr. Reycraft:** Here's an opportunity, Mr. Prue, for the province to blaze a trail.

**The Chair:** Thank you, Mr. Duguid.

**Mr. Duguid:** Mr. Reycraft, let me first congratulate you on your ascendancy to the presidency and chairmanship.

**Mr. Reycraft:** Thank you.

**Mr. Duguid:** Secondly, in your presentation you talked about mature orders of government. You talked about trust and respect as being core values of this legislation, and, frankly, I think they're core values of our government when it comes to our relationships with municipalities.

My question for you is this: Are municipalities mature enough to handle the responsibility to appoint and define the role of municipally appointed ombudsmen? In your experience, would a municipality likely appoint a less-than-independent person to that role, such as, potentially, an employee?

**Mr. Reycraft:** I think a municipal council that appointed an employee to be its municipal ombudsman would be committing political suicide. I cannot imagine a municipal council doing that. I would think what is likely to occur is that they will appoint a solicitor or a law firm



to act as a municipal ombudsman, and allow them to deal with complaints about open meetings that are forwarded to the council.

**Mr. Duguid:** In terms of the ability to handle the role and the definition of the role, are you confident that municipalities across Ontario are capable enough to define the role of their ombudsman in an effective manner?

**Mr. Reycraft:** I certainly believe they are. The municipal world has changed considerably over the last decade. We now are down to 445 municipalities in the province, which is less than half of that which existed back in the early 1990s. Municipalities, as a general rule, are larger than those that existed before the many amalgamations that occurred in the late 1990s and in 2001. They deal with a much greater range of responsibilities now than they did in those days as a result of transfer of the delivery and funding of certain services from provincial government to municipal governments. I believe that if they're capable to handle important issues like social housing and land ambulance, they're certainly mature enough to handle an issue like this one.

**The Chair:** Thank you very much for your deputation today. We appreciate your being here and your patience with us at the beginning of the meeting.

1650

#### REGIONAL MUNICIPALITY OF PEEL

**The Chair:** Our next delegation is from the region of Peel—Chairman Emil Kolb and Patrick O'Connor. When you begin, after you've introduced yourself and the organization you speak for, you will have 15 minutes. If there's time left over, we'll be able to ask you questions. Welcome. It's nice to see the region of Peel here at the table.

**Mr. Emil Kolb:** Honourable Chair and honourable members of the standing committee, it is my pleasure to appear before you on behalf of the council of the regional municipality of Peel to offer comments and suggestions for amendments to Bill 130. I thank you for the opportunity to appear before you today.

Regional council is broadly supportive of many of the enhancements which Bill 130 will bring to the Municipal Act. As you well know, the expanded and rebalanced regional council elected on Monday in Peel region will face many challenges as it goes to work on behalf of Peel residents in the city of Mississauga, Brampton and the town of Caledon.

On October 26, 2006, the ongoing regional council, while generally supportive of Bill 130, expressed a concern with how the new broad authorities provided to both Peel region and its area municipalities will operate in a two-tier municipal system. The essential point is that Bill 130 must protect the systems of both the region and its area municipalities from being frustrated by the use of the new broad authorities.

There is a gap in the protection. Systems operated under spheres of jurisdiction, such as transit at the local level and waste disposal and sewer and water at the

regional level, are not adequately protected. No doubt common sense is likely to prevail, and the wide range of broad authorities will not be used by one tier to frustrate the system of the other. Bill 130 clearly intends, in section 13.1, to legally prevent this interference from taking place. But in the case of systems like transit, sanitary sewers or water, the protection is not there. There is a gap which the outgoing regional council has asked you to close, and it has even provided the wording which could be used to close the gap.

I have with me today Mr. Patrick O'Connor, one of our regional lawyers familiar with this matter. He can speak to some of the technical aspects of the concern and the solution we are asking you to use in closing the gap. With that, I'll turn it over to Mr. O'Connor.

**Mr. Patrick O'Connor:** Our presentation is focused on the use of the new broad authorities under Bill 130 in a two-tier municipal system and on the purpose of the act to provide good government in that context of two-tier municipal systems. As the committee members will be well aware, two-tier municipal government continues in many parts of the province, including Peel. This means that two municipal governments are serving the same constituents in the same geographic area.

The drafters of Bill 130 faced a difficulty. They had to adapt the broad authorities that had been developed essentially for the city of Toronto, a one-tier municipal government, for use throughout the province, including in a two-tier situation such as we have in Peel. So what happened, and what we see in Bill 130, is essentially an engrafting of the new broad authorities onto the existing situation under the Municipal Act. The existing situation is essentially that you have a well-defined separation of responsibilities between the two tiers. Those assignments of jurisdiction occur under what we call spheres of jurisdiction and they occur under express statutory provisions throughout the Municipal Act and many others.

Here we have the drafters attempting to provide broad authorities to both spheres without upsetting the division of existing responsibilities under the spheres of jurisdiction under the specific authorities, and they're also trying to do it without setting any kind of paramountcy rule, by which I mean that under spheres of jurisdiction one level of municipal government's bylaws will prevail over the other. It's the level that has the exclusive assignment of the sphere of jurisdiction that is going to be able to enact bylaws in that sphere of jurisdiction.

This creates a fundamental tension in Bill 130 because you're now faced with giving two levels of government plenary powers, broad authorities, in the same bailiwick without the two getting into each other's businesses, so to speak. How do you do that? In an attempt to do that, the drafters have set up a number of rules in the bill. Peel council is now expressing a concern that these rules are too uncertain and may lead to duplication, even litigation, between municipal governments. It's not an attractive scenario.

Bill 130 makes it possible to have one-tier municipal government exercising its broad authorities over the busi-



nesses of the other tier when that other tier has precisely the same set of broad authorities provided to it. If that is to be the case, there is a provision—Chairman Kolb has specifically alluded to section 13.1, which is particularly insufficient. Section 13.1 prevents the use of broad authorities by one tier to frustrate an integral part of a system of another tier, and that's a good thing, but it offers that protection only to a limited class of systems. That's the class of systems that are based on the broad authorities. I regret I'm getting a little bit technical here. In other words, section 13.1 does not protect from frustration systems which are based on spheres or on other statutory authorities. In effect, it doesn't protect from frustration all of the existing municipal systems, because the existing municipal systems are all based on either spheres or other statutory authorities. No municipal systems existing today, whether local or regional, county or town, enjoy the protection of section 13.1. We view that as something of an oversight, something that 13.1 doesn't intend to result in.

By way of a hypothetical scenario, in Peel this could see a regional bylaw enacted under the region's new broad authority over such matters as health and safety, frustrating an integral part of a local transit system. The flip side of the coin: It could see a local bylaw enacted under an area municipality's broad authority over environmental well-being frustrating an integral part of the region's waste disposal system. We say the provision intended to address that, 13.1, doesn't do the trick.

Peel's council is asking that Bill 130 be amended very specifically to extend the protection of 13.1 to all systems of both tiers in a two-tier system. That is to say no broad authority could be used to frustrate an integral part of any municipal system. Regardless of whether that system is based on broad authorities, spheres or other statutory provisions, I think it just makes good sense.

That is the wording we've proposed in the resolution that's been attached to the written submission that I hope you'll all have received, and that is the request that we respectfully submit.

**The Chair:** You've left a little over two minutes for each party. We'll begin the questions with Mr. Prue.

**Mr. Prue:** You are right that it was a little arcane. I was trying to follow it as best I could. I just want to clarify: At the bottom of page 2 of the written submission, the boldface, is that the amendment you would like made—

**Mr. O'Connor:** No.

**Mr. Prue:** —or is the amendment on the back page?

**Mr. O'Connor:** The amendment is in appendix A, and it gets even more arcane and technical. It's wording that's suggested for section 13.1.

**Mr. Prue:** So you are requesting, then, just so I have it clear, that the committee delete 13.1 in its present form and substitute instead what you have contained in appendix A?

1700

**Mr. O'Connor:** Yes.

**Mr. Prue:** That will resolve the difficulties for the region of Peel.

**Mr. O'Connor:** It would.

**Mr. Prue:** Okay. Have you been in consultation with other regions with two-tier governments, and do you know whether or not they're in concurrence with what you have said?

**Mr. O'Connor:** I can't say we've had that level of consultation. We have had some discussion of this matter with representatives of the area municipalities within Peel. I can't address the implications for other municipalities.

**The Chair:** The government side.

**Mr. Duguid:** You're quite right when you say it was a challenge for the government to extend broad authorities to municipalities, which I think all of us support, and how do you do it with the two-tier systems, all of which are different in one way or another, so there's no standard two-tier system out there.

I've listened closely to your argument and certainly we'll take a close look at what you're suggesting. My understanding, though, of the legislation is that the programs that are currently provided within certain spheres, whether the regional government or the local government are providing that service, are protected and the status quo remains. You're suggesting that that protection is not complete, I think.

**Mr. O'Connor:** Yes. I think that intention is evident in the bill and there's a gap or a failure to achieve it because 13.1, which is one of the provisions that you used to achieve that end, is limited in a way that is unfortunate and we think should be removed.

**Mr. Duguid:** You're a lawyer, and far be it from me to argue with you on this, and I don't plan to because we'll certainly take a good, close look at it and get our legal staff looking at it. But again, my understanding of the way it's written, though, is that if the region of Peel looks after snow clearing, for instance—just an example; I don't know if they do but they probably do—that would remain the same and the lower regions would not be able to interfere with that the way it's written.

**Mr. O'Connor:** We think that's the policy the bill is aiming at and hasn't quite achieved it. We're trying to help you to get there.

**Mr. Duguid:** Okay, and you're supportive of most of the rest of the bill?

**Mr. O'Connor:** Yes.

**Mr. Duguid:** We appreciate that. Thank you.

**Mr. Hardeman:** Thank you for the presentation as it relates to the two-tier structure and the need to clarify that. I would totally agree with you that it's important, on the shared responsibilities, to make sure that one party doesn't disagree with the other and hold up the whole process because of it.

I just wanted, being municipal representatives, to touch on a couple of the other ones. In the region of Peel, the issue of closed meetings: Has that been a problem in the past, where the municipality was unable to get their discussion done or councillors were not speaking out because they had to speak out in public?



**Mr. Kolb:** I think there's always a fear that if you go into a closed session, you're going to be making decisions there that you're not going to be making in public. But in the process that we have, certainly in the 16 years that I've been chair at the region of Peel, we have followed the rules and procedures very closely. But, as I think was said in the previous presentation, there are times when it would be appropriate to have technical advice from your staff or from your legal counsel if you have difficult situations to deal with, which maybe some councillors don't understand as well as other councillors may understand, and to make sure that they understand what it is.

I don't find today that in camera meetings are very in camera meetings. Usually by the time you get out of your seat, it's already out in the news anyhow. So the best thing to do is to follow the process that is there and recognize—I think—that AMO is speaking on behalf of the municipalities. If there is a situation as it was described, maybe there really is no provision to do that. Rather than doing it illegally outside the legislation, you'd be better to have the legislation recognize that there are no decisions to be made in camera. That discussion is very important.

**Mr. Hardeman:** It seems strange to me that we keep talking about the discussion that takes place between staff and the councillors, that that's why we need to go into an in camera meeting. My understanding was that information from staff is available to any individual councillor in private any time they deem it appropriate. We're talking about council getting together and discussing the issue at hand and going behind closed doors to do that. Do you think there's a need for that?

**Mr. Kolb:** There are certainly times when there are very technical issues you have to deal with, and you need advice from your technical people or from your legal people on how to deal with those matters. We've had some very touchy issues in Peel. I appreciate the presentation that AMO made on how you deal with that appropriately within the law. There is freedom of information available, as you know, which anybody can ask for, and if something is inappropriately done, you can discover that through freedom of information. So I don't disagree with what AMO is asking for at this time.

**The Chair:** Thank you, Mr. Kolb and Mr. O'Connor. We appreciate your being here today.

#### ONTARIO GOOD ROADS ASSOCIATION

**The Chair:** Our next delegation is the Ontario Good Roads Association—Mr. Tiernay. Welcome, gentlemen. Please make yourselves comfortable. I only have one name here, so if you could identify yourselves and the organization you speak for before you begin. You'll have 15 minutes, and if you leave time at the end, there'll be an opportunity for us to ask questions.

**Mr. Tony Prevedel:** Thank you very much, Madam Chair and members of committee. My name is Tony Prevedel. I'm director of public works for the town of

Whitby and president of the Ontario Good Roads Association. With me today is Joe Tiernay, the executive director of the association. I intend to make some general comments on Bill 130, and then Joe will comment in a little bit more specific detail on the bill. We're very pleased to be here this afternoon.

At the outset, I would like to say that our association supports Bill 130, not only the road-related provisions but the broader municipal provisions as well.

We represent over 400 Ontario municipalities, including all the small, rural and northern municipalities, right down to the city of Toronto. One of our mandates is to advocate on behalf of the transportation infrastructure concerns of municipalities.

In 2004, we participated on AMO's steering committee that prepared a report on what a new Municipal Act should contain. We supported the nine principles for achieving a mature relationship as the basis for a new Municipal Act, as well as the yardstick against which all municipally related legislation should be measured. We do have some specific concerns on some of the recommendations that we plan to comment on, and I'm going to turn the floor over to Joe to speak specifically.

**Mr. Joseph Tiernay:** Thank you, Tony, Madam Chair and members of the committee. First off, I want to say that OGRA supports the granting of broad powers to municipalities. We recognize that these broad powers make several specific powers unnecessary. Additionally, several sections have been repealed and replaced with the broad powers. We are also aware of the changes to the notice provisions, and OGRA stands ready to assist our municipalities in the preparation of notices required for all road and infrastructure-related matters.

As a general comment regarding the seven policies that must be developed by municipalities, we concur with others that the date of January 1, 2007, will be problematic. For example, the policy dealing with property and civil rights will impact how municipalities deal with their roads, particularly as it affects abutting property owners. This particular policy seems unclear in its intended scope, and may result in municipalities adopting policies that would not adequately address all foreseeable situations. We recommend that Bill 130 should be amended to provide that these policies do not come into effect until a later date. OGRA is prepared to work with the ministry to address these concerns.

I want to specifically mention section 44 of the current Municipal Act. This section deals with municipal liability and contains authority for the Minister of Transportation to establish, by regulation, minimum maintenance standards. In previous submissions on amendments to the Municipal Act, OGRA has strongly recommended that this section remain in place so that minimum maintenance standards continue to be set by regulation. It is OGRA's position that the standards will be more difficult to challenge in court if they remain established by regulation. The standards provide a degree of uniformity and standardization that can only assist in improving public safety. It remains our position that, in this case, a



greater good is served by a uniform standard. OGRA would like to commend the minister for retaining this section.

1710

I also want to comment on the amendments to the Line Fences Act that are contained in schedule D of the bill. OGRA is disappointed that section 20 remains in the act. Bill 130 proposes two amendments to this section of the Line Fences Act that are intended to curtail fencing demands from adjoining landowners. Municipalities are still, however, responsible for constructing, keeping up and repairing the fences. This provision seems to be somewhat at odds with the government's trail strategy, which promotes the use of trails for economic development purposes, physical activity and an enhanced quality of life. In our opinion, the use of trails is threatened by various lawsuits claiming liability against municipalities and other trail owners. We believe the Occupiers' Liability Act should be amended to establish that those using trails do so at their own risk.

During the stakeholder meetings on the Line Fences Act, headed by Dr. Wayne Caldwell, it became clear that the majority of concerns of adjoining landowners and farmers centred around trespassing and landowner liability. If the concerns of trespass and liability are addressed through amendments to the Occupiers' Liability Act and the trespass act, section 20 of the Line Fences Act could be removed since it would no longer be necessary.

Notwithstanding these concerns, OGRA is very pleased to provide comments on Bill 130. We hope our comments will be useful, and we would be pleased to answer any questions you might have.

**The Chair:** You've left about three and a half minutes for each party, beginning with Mr. Leal.

**Mr. Jeff Leal (Peterborough):** I must say, Joe, it's good to see you again. I had the pleasure of working with Joe when I was a city councillor in Peterborough and Joe was the CEO of the county of Peterborough. We had a very good and long-standing relationship.

I'm interested in the Line Fences Act. Joe would know that in Peterborough county we had the issue of the abandoned rail lines, the development of trails and people wanting fences to curtail intrusions onto their properties. Joe, in terms of doing that and the liability issue, have you got any more additional thoughts on that than what's in your written remarks here?

**Mr. Tiernay:** All we know is that municipalities are still reluctant to proceed with the development of trails because of that issue, because of costs associated with fencing and the liability associated with that. Property owners obviously have their concerns, but we think the issue is better addressed through the trespass act or the Occupiers' Liability Act rather than the Municipal Act.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Just further to that, I'm trying to understand your issue here. It's the Occupiers' Liability Act that the liability falls under; is that correct?

**Mr. Tiernay:** I believe so, yes.

**Mr. Duguid:** Or is it a series of acts? I'm not quite sure, but I think that's it. What does that have to do with the Municipal Act and the changes we're making here? What is the linkage? Is that not something that should come under amendments to another act altogether? Maybe you could inform me further on that.

**Mr. Tiernay:** The issue we raised today is that, under the proposed Bill 130, the provision is still there that municipalities are responsible for the constructing, up-keep and maintaining of fences on trails. We think that if the other legislation was amended to put the liability associated with the use of trails on the users thereof, you could remove that section from the Municipal Act, thereby removing a financial burden and a possible impediment for the development of trails in Ontario.

**Mr. Duguid:** Have you had any discussions with the Attorney General's office or the Ministry of Health Promotion on this at all? Have you had an opportunity?

**Mr. Tiernay:** No, we have not.

**Mr. Duguid:** I appreciate that. Thank you.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you for your presentation. I too want to question you a little bit on the Line Fences Act. It seems that your interpretation is totally opposite from what I interpreted the act as being intended to do. Presently, all the railroad rights-of-way have an obligation to keep fences repaired on both sides of it.

**Mr. Tiernay:** That's correct.

**Mr. Hardeman:** This act limits that liability, or that responsibility, to future owners. It applies the Line Fences Act to that section where the adjoining property owners will have to pay for half the fence. The fence will be there where it's required; where it's not required, it won't be there. I don't understand from your presentation what the Line Fences Act has to do with liability.

**Mr. Tiernay:** I'll go back to, as Mr. Leal mentioned, my stint in Peterborough county. The county was looking at taking over ownership of several old rail trails to develop trails through Peterborough county but was reluctant to do so. Each of the area municipalities was reluctant to do so because once they took ownership of those lands, they would then be required to fence them in order to maintain safety for the users against the property owners.

**Mr. Hardeman:** That's the way I see it too, but without this section they will not only have to deal with the Line Fences Act but they will have to put a fence on both sides of the right-of-way for the total length of the right-of-way if they want to take it over for a trail, because that's the obligation that was put there when it was a railroad. This actually limits that responsibility so that they only have to do it where it's required by the adjoining property owner.

**Mr. Tiernay:** Which pretty much covers the entire trail.

**Mr. Hardeman:** Presently, the Line Fences Act does not apply to the fence along the railroad. With this, the Line Fences Act will apply, which is that both sides of the fence have to help pay for the fence. So I see this as a



positive, and I just caution you that if we take this out, it will make it, in my opinion, worse for the railroad right-of-way.

**Mr. Tiernay:** That's not the legal opinion we've received.

**Mr. Prue:** I really don't have a question; they've all been asked. I would just ask staff if they could please clarify the dichotomy between what Mr. Hardeman believes is in the bill and what the deputants believe is in the bill. I think we need to absolutely know what the impact will be. I would simply ask that and thank the deputants for their time.

**The Chair:** We'll get an answer for you.

Thank you very much, gentlemen, for being here.

### OMBUDSMAN ONTARIO

**The Chair:** Our next deputant is the Ombudsman's office, Mr. Marin. Welcome. If you could identify yourself and the office you speak for, you'll have 15 minutes. Thank you very much for coming.

**Mr. André Marin:** Thank you. I'm André Marin, the Ombudsman of Ontario. I'm accompanied, to my right, by Wendy Ray, who is senior counsel, and to my left, by Barb Finlay, the Deputy Ombudsman of Ontario.

I thank the committee for allowing me the opportunity to address Bill 130 today. I intend to make a presentation and then answer any questions you may have. I am grateful to the committee for having granted me an opportunity to make submissions. I will confine my comments to one of the two issues that concern me, the municipal ombudsman provisions. I've asked for another appearance at which I would address the open meetings provisions, which fundamentally alter my jurisdiction as Ombudsman of Ontario.

At the time Bill 130 was introduced, I commented that the proposed amendments ensuring that municipalities hold public meetings and authorizing municipalities to create their own ombudsmen fell short of the mark. While purporting to introduce a degree of accountability into municipal administration, I believe these measures, as currently drafted, are fatally flawed and would result in an unfair, inequitable and unsustainable patchwork of procedures throughout Ontario.

Bill 130 proposes that municipalities would have the authority to create their own ombudsmen. While the city of Toronto, under the city of Toronto Act, 2006, will be required to create an ombudsman, this official is optional in other jurisdictions.

The Premier and the Minister of Municipal Affairs need to be applauded for their stated intention to increase oversight in the municipalities. The devil, however, is in the details.

As it currently stands, the proposed municipal ombudsman model is deficient and offensive to basic principles of oversight. There is a real danger that if the bill goes forward unchanged, Ontario will be left with a system of municipal oversight plagued by inequity,

inconsistency and ineffectiveness—a far cry from what is intended by the government.

The current legislative proposal is severely flawed. It does not secure a basic tenet of oversight, the independence of the ombudsman. In fact, quite the contrary: Municipal ombudsmen can actually be city employees. An ombudsman is intended to be a watchdog and not a lapdog. Municipalities should not be allowed to use the goodwill associated with the name “ombudsman” to create public relations departments cloaked in the mantle of ombudsmen.

The proposed legislative framework creates an impotent oversight office in many respects. A fundamental defect is that the ombudsman powers and authority are not set out in legislation. Even though what is required is well known, municipalities are free to establish the powers and duties of their ombudsman. Indeed, the function provisions leave it to municipalities to decide when the ombudsman can conduct investigations. Municipalities can confine the kinds of investigations their ombudsmen can conduct by limiting them to specific complaints or preventing “own motion” investigations.

### 1720

The real test of an ombudsman's office is whether or not it possesses the four cornerstones that underpin all true ombudsman offices. These cornerstones are: independence, impartiality, confidentiality and a credible investigative process. I would like to propose to you that these cornerstones be incorporated in Bill 130 to ensure that Ontario's citizens have access to credible and effective ombudsmen at the municipal level.

We are not talking here about micromanaging details in municipalities. We are talking about supplying a framework to protect the meaning that's intended by the government in proposing this bill.

Contrary to what Bill 130 would allow, under no circumstances should ombudsmen be employees of the organizations they oversee. They should have a fixed term, adequate resourcing and operational independence. The ombudsman should have broad investigative authority, including the discretion to report publicly. A disciplined and consistent approach is required to ensure that the citizens of Ontario have access to fair, equitable and sustainable oversight measures.

As mentioned to you previously, the four cornerstones of true ombudsman oversight are independence, impartiality, confidentiality and a credible investigative process. They are necessary elements for an effective and accountable ombudsman office. They are all captured in the Ombudsman Act of Ontario. There are many complaint resolution mechanisms in the private and public sectors that are touted as ombudsmen but that are really consumer relations bureaus. While these may serve a useful purpose, they should not be confused with the role of an ombudsman.

Contrary to other oversight bodies such as auditors, there is no professional regulation of ombudsmen. Anyone can hang up their shingle and call themselves an ombudsman. There are hundreds of examples throughout



the world and in North America of such circumstances. In modern society, there has been a proliferation of complaint bodies using the term inappropriately. In some jurisdictions, by law, they have restricted the use of the name "ombudsman" to ensure that only those displaying the fundamental characteristics of an ombudsman can use that name.

Independence is often referred to as the hallmark of ombudsmanship. It is typically reflected in operational and financial independence. The ombudsman should be able to contract for services, hire staff, have security of tenure and have adequate financial resources. The ombudsman should not report through a body that the ombudsman is responsible for reviewing. The ombudsman's conduct should be free from actual and perceived interference.

Impartiality follows independence. Ombudsmanship does not involve advocacy on behalf of complainants or agencies, but rather the principled pursuit of reasonable and fair administrative process and good government.

The ombudsman's reviews and investigations must be carried out in private. Confidentiality guarantees protection for complainants and co-operation from authorities. It fosters accessibility and engenders trust in the ombudsman process. It makes the ombudsman a unique and safe place to turn. The ombudsman must be exempt from any relevant access to information legislation and not compellable, in law, to protect the integrity of the process. Only the ombudsman should have discretion to disclose information about his investigations where appropriate in the public interest.

The ombudsman requires clear investigative authority in order to carry out thorough fact-finding work. The ombudsman should be able to compel disclosure of information and to inspect. There should also be sanctions available to deal with individuals or organizations that fail to comply. In addition, the ombudsman should be able to deal effectively with any reprisal against whistle-blowers.

A municipal ombudsman scheme that does not possess these cornerstones will result in ombudsmen in name only. Such schemes will not have the tools available for them to deal with serious issues that will inevitably arise from time to time. They will not be credible, either to those overseen or to the public at large. They will not meet expectations. That is not the oversight that Ontarians deserve.

The United States Ombudsman Association, of which many members are Canadian governmental members, has developed governmental ombudsman standards that flesh out in much greater detail these four cornerstones. I've provided copies to the committee for your perusal.

In addition to providing the parameters for the proper set-up and functioning of municipal ombudsman offices, the province should provide an avenue of complaint to the provincial Ombudsman on the basis that a municipality has failed to abide by the legal standards set by the province in creating an ombudsman's office. This would ensure that the city of Toronto and other municipalities

which either must set up or may contemplate setting up an ombudsman office are accountable for the way in which they do so and that the offices are effective and meaningful. This would safeguard against the temptation to take shortcuts in setting up ombudsman offices.

I'd propose that if a municipality does not appoint an ombudsman, citizens should have recourse to the provincial Ombudsman to complain about its administration.

The citizens of Ontario deserve a strong, credible, independent oversight mechanism to deal with complaints about municipal government administration. Accordingly, I'm making the following recommendations:

First, minimum standards should be established under Bill 130 to ensure that ombudsmen appointed at the municipal level are able to provide credible and effective service to Ontario's citizens.

Second, Bill 130 should provide an avenue of complaint to the provincial Ombudsman on the basis that a municipality has failed to comply with legislated standards.

Third, Bill 130 should provide that when a municipality has not appointed an ombudsman, citizens may complain to the provincial Ombudsman about that municipality's administration.

Once again, I would like to thank the committee for allowing me to provide my views on this one aspect of Bill 130. I believe that the importance of effective municipal oversight cannot be overestimated. This committee has an opportunity to ensure that genuine oversight of municipal administration is achieved through Bill 130. Ontarians need real municipal ombudsmen. There is no point in introducing window dressing, regardless of the fanfare that accompanies it.

The government has stated many times that this bill is not written in stone and that it will be open to suggestions to improve the proposed legislation. This committee has a unique opportunity to have its voice heard loud and clear to ensure that oversight of municipalities is not compromised by hastily developed provisions that will defeat the otherwise honourable intentions of the Municipal Act amendments.

**The Chair:** You've left about a minute and a half, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the presentation.

Obviously, we've already heard from some presenters from the municipal government that there is no need to have the provincial Ombudsman be responsible; that municipalities would appoint an ombudsman to do the job. You point out in your presentation that your concern is that they will not be able to appoint the type of structure that will accomplish what you would like done.

Could you tell me, if they do everything properly, what would be the difference between there being a municipal ombudsman office and municipalities using the provincial Ombudsman's office for the same purpose? If it was properly structured, why would it still benefit municipalities to have their own?



**Mr. Marin:** A properly structured municipal ombudsman should have the same look and feel as the provincial Ombudsman. The province should take a leadership role by at least setting basic standards. We're not talking about micromanaging. But why would 445 municipalities which have varying resources create the same kinds of offices? You're going to have 445 different offices; my concern is that there be minimum standards to allow municipalities to do the right thing and to set them up properly.

**Mr. Hardeman:** Again, to clarify, if you have a completely independent ombudsman, does it really matter whether the title is provincial Ombudsman or municipal ombudsman?

**Mr. Marin:** No. In my submission, I'm not challenging the bill's intention to allow municipalities to have their own ombudsman; what I'm saying is that there's a very strong public policy reason to do it properly. That's the interest that I'm representing today.

**Mr. Prue:** You have requested a second time frame, and although I support that, I'm not sure you're going to get it. So I would like, in my minute and a half, to ask you about the other aspect, because it's equally troubling to me, that of meetings closed to the public. What is your position on that? Sorry, I've got a minute and 15 seconds.

1730

**Mr. Marin:** The way the legislation is set up, any municipality can oust the jurisdiction of the Ombudsman simply by appointing their own investigator, who can also be a city employee. If the objective of the legislation, as stated by the Premier, is to increase accountability, there's no accountability there. You can appoint your own city employee to be your own investigator, and there goes the jurisdiction of the Ombudsman.

Secondly, I think to do this properly to increase accountability, if this is a jurisdiction that the province wants me to have, it should be as part of my role as Ombudsman. If someone wants to complain about open meetings, they should just avail themselves of the Ombudsman Act. There's no need to redefine the wheel. All you'd need is an amendment to the Ombudsman Act saying that citizens of Ontario who have a complaint about open meetings can avail themselves of the Ombudsman Act and the procedure set up by the office. It's as simple as that.

**Mr. Prue:** But within the four walls of this legislation, it allows not only for meetings to be closed to the public but it also allows people who aren't even present at the meeting to vote. Do you have any position on that?

**Mr. Marin:** No, I don't have any position on that. I'm more concerned with the aspect that right now to say that this gives this new, grand power for the Ombudsman of Ontario to police open meetings is an illusion. If that is the intention of the legislation, it should say so clearly and be part of my normal jurisdiction, not a jurisdiction that could be ousted by a municipality appointing their own investigator beholden to that particular municipality.

**Mr. Duguid:** I want to thank you, Mr. Marin, for coming forward with recommendations to us and a very

thorough analysis of some of the issues here. I want to thank you for your proactivity in this.

My first question is along the lines of what the cornerstone of this particular legislation is, and that's respect for the maturity of municipalities across the province. I'm trying to square that with your suggestion that the municipal Ombudsman model is deficient and offensive to the basic principles of oversight. Is that not assuming that municipalities will be irresponsible with this new power? Is it your view that there's a good chance municipalities will act irresponsibly in appointing an Ombudsman?

**Mr. Marin:** I think we have to be realistic that the city of Toronto has resources that the city of Thunder Bay doesn't have, that the city of Ottawa doesn't have. I think that to not provide guidance here is to invite everyone to structure it according to their resources. The act allows the ombudsmen's offices to be delegated the exact power that the municipality decides. I think what you would be hearing from municipalities—I'm not suggesting at all that there is any kind of pernicious motivation on the part of municipalities. But the reality is—it's in today's paper—that municipalities are cash-strapped. The temptation to set up an ombudsman's office with no backbone, no structure, is something that the province should take a lead on, just like the province is taking a lead on open meetings. You could say the same thing: Why is the province not just allowing municipalities to decide when they have open meetings or not?

The province is setting some standards. What I'm advocating is that there should be some standards set for municipalities as well as to how to set up an Ombudsman's office. Throughout North America—cities, universities, corporations, government departments—there is a history that's well established, in the hundreds, of those organizations that are noble, trustworthy and have the confidence of the public taking a shortcut when it comes to setting up ombudsmen's offices. So I think we should be inspired by the history and try to show some leadership on this issue.

**The Chair:** Thank you very much for being here today. We appreciate it.

GREG LEVINE

**The Chair:** Our next delegation is Mr. Greg Levine. Welcome. Make yourself comfortable. Do you speak for a group or are you independent?

**Mr. Greg Levine:** I am independent.

**The Chair:** Okay. Great. If you could state your name for Hansard, when you begin you'll have 15 minutes. If you leave time, there will be an opportunity for us to ask questions.

**Mr. Levine:** Thanks. I'll try to be brief. My name is Greg Levine. I'm a lawyer in London, Ontario, and Southampton, Ontario. I have some expertise in government ethics law. I've been doing it for about 18 years, various parts—code of conduct, conflict of interest, ombudsmen and so on. I was the general counsel to the



provincial Ombudsman in British Columbia for nine years. I advised the city of Toronto, prior to going to BC, on ethics issues and so on. So I come to this with some interest in the accountability provisions, and that's all I want to speak about today. I agree with most of what the Ombudsman has just said about the ombudsman part, so I'm going to be very brief in those bits of my comments.

Bill 130 introduces a discretionary accountability system, which has positive elements but many gaps. Left as it is, the bill runs the risk of not being used—because it is discretionary—of not dealing with ethical questions, which are of pressing public concern, and of creating the appearance of establishing effective ethics systems without actually doing so.

A couple of general things, one of which the Ombudsman has touched on: What he said about the ombudsman and independence is true of all of the officers that are being created. The three that I'm interested in are the integrity commissioner, the lobbyist registrar and the ombudsman. The administrative law literature and the practice of these kinds of offices indicates that independence is critical, and independence is not enshrined in these statutes, in these sections of the statute. The provincial Ombudsman is an officer of the Legislature. I would suggest you should make something like an officer of the council position. You need mandatory fixed terms. You need fixed salaries. You need budget lines fixed for these offices if they're not to be simply tools. I'm thinking of this from a public point of view, as well as someone who's been involved in this stuff.

The comment I heard when I first sat down here while you people were debating whether you'd go on today or not—that AMO is the major stakeholder—isn't right. The public is the major stakeholder. The public matters, and you have to have credible institutions for this accountability stuff to work, and they aren't.

On the ombudsman stuff, just briefly, I think there are some things—and I have 14 recommendations here; I'm not going to run through them all. The idea of standards: There should be an administrative justice code within the ombudsman piece, just as there is in provincial legislation. There should be an established code of refusal as well in the legislation so that we know why the ombudsman is refusing to investigate. There should be a complaints mechanism. If you look at the ombudsman section, there's no complaints mechanism. Is this a public entity or not? It doesn't have to be, and many ombudsmen are not. They're employee ombudsmen or, as the Ombudsman said, they may be consumer and somewhat public, but not necessarily public. So that's my comment on the ombudsman piece.

I've talked about and stressed independence. Related to that, a problem that I'm hearing a lot about from councillors and the public is, who can afford these? That was something that the Ombudsman also alluded to. The bill doesn't prevent municipalities from banding together to have a regional ombudsman, but it doesn't promote it either. I would strongly suggest that you consider having some sort of multi-municipality or regional account-

ability officer possibility in the legislation to encourage that.

I'm going to go backwards in my presentation, actually, so I'll go to the lobbyist registry. There is no definition of lobbying in this bill; it just asks the municipalities to define lobbying. There's a debate that's gone on in Toronto in the last while. They haven't settled on what lobbying is, as many of us know, but it shouldn't, in my view, include unpaid lobbying. Paid lobbying is the focus of all other lobbyist registrations in North America, and it will be very interesting; Toronto is on the cusp of adopting a system which will actually try to regulate unpaid lobbying. I think that's a road you don't want to go down. So I would put in this bill, and in the Toronto bill, that it's only to regulate paid lobbyists.

1740

It's interesting that the other two officers—the ombudsman and integrity commissioner—are required to report to council, but the lobbyist registrar isn't. Why? I don't know why. It should be required to report to council. That's a piece of the independence puzzle.

The last thing I'll mention is a big thing. It's about the integrity commissioner and about conflict of interest. What's being set up here has the potential to be a very confusing system. Pecuniary conflict of interest is dealt with by the Municipal Conflict of Interest Act. The code of conduct that can be established under municipal legislation can deal with apparent conflict of interest, and it could deal with private conflict of interest. So what you've got is a potential for different systems to deal with conflict of interest—by the municipality or by the court. I just think there is serious potential for confusion here. I can also tell you, as a lawyer who gets called at least a couple of times a month by citizens and residents worried about conflict of interest, that it is by far the most pressing ethics issue, and it's not dealt with in Bill 130 and you've left ground open for real, serious confusion. If you don't believe that, you should look at what the integrity commissioner is being asked to do in the city of Toronto.

Those are my thoughts, very briefly.

**The Chair:** You've left about two and a half minutes for each party to ask questions, beginning with Mr. Prue.

**Mr. Prue:** Thank you very much—an intriguing idea of a regional ombudsperson. Are you looking at this as upper tier in those places that have upper-tier governments?

**Mr. Levine:** You could do it that way, but even two lower-tier municipalities could band together theoretically.

**Mr. Prue:** And I guess kick in whatever the approved money was and then sort of leave the ombudsman alone, because I do recognize what Mr. Marin had to say. So it would be merely a funding mechanism.

**Mr. Levine:** Yes, I think so. Are you getting at what functions they would also expect—they'd have to agree on the function.

**Mr. Prue:** Well, yes. That's where I'm trying to get to.



**Mr. Levine:** I think they would have to, but I do support what he also said about having a serious parliamentary ombudsman.

**Mr. Prue:** Okay. The definition of lobbyist: I was a mayor and then a member of the megacity council of Toronto in its first term and a half. There's a very difficult definition of what constitutes a lobbyist. Is someone coming from a church group saying, "You've got to do more to help the poor," a lobbyist? In my view, I never really quite considered them to be the same kind of lobbyist as Jeff Lyons when he would come to my office on behalf of some mega corporation seeking contracts. There was quite a difference. One I would see—the church person—the other one I would not, because in my mind I knew the difference. In your mind, is there a difference? Should we be including somebody from a church group seeking to help the poor as a lobbyist?

**Mr. Levine:** You see, I wouldn't put it that way because somebody from a church group could be a paid lobbyist. I think the reason that, almost worldwide, lobbyist registries deal with paid lobbyists is that it's about people being able to use resources other than their own to influence public policy and overwhelm public policy through hiring people to represent them. I think that's what I would want to capture in a lobbyist registry. I understand that there can be influential unpaid people; I do understand that. But I don't think I would go there. It is a basic right of a resident of a municipality and a citizen of the country to contact people, and I don't think I'd want to get into trying to register every conceivable contact from an unpaid person.

**Mr. Kevin Daniel Flynn (Oakville):** Thank you, Mr. Levine. I enjoyed the presentation. I spent 18 years on council in the region of Halton, town of Oakville, and conflict of interest was something that was very, very clearly understood by anybody I served with. It had never been a question in 18 years. You're saying the experience is different.

**Mr. Levine:** I don't agree with you at all, sir, because I get calls from councillors and the public, and they don't understand it.

**Mr. Flynn:** But have you ever seen an offence of that act in the region of Halton or the town of Oakville?

**Mr. Levine:** Have I ever seen an offence? I can't answer that.

**Mr. Flynn:** Have you seen anybody offend that?

**Mr. Levine:** I can't answer that, no. I can't answer that. I'm not in Oakville.

**Mr. Flynn:** Okay. It's tempting to drift into the theoretical or the academic—

**Mr. Levine:** It's not theoretical, though.

**Mr. Flynn:** Well, it certainly is in our case in Oakville.

**Mr. Levine:** Well, that's interesting.

**Mr. Flynn:** I'm just wondering about the independence and the Ombudsman. Where does a person go when they think they've been treated unfairly by the Ombudsman?

**Mr. Levine:** In BC you go to the Speaker of the House.

**Mr. Flynn:** Okay. What is the remedy in Ontario currently?

**Mr. Levine:** I would assume you'd do something similar.

**Mr. Flynn:** The only practical experience I can think of in my own community of what's being talked about today is the ombud position at our local hospital, if somebody thinks they've been treated unfairly: They've gone into emergency and they've waited too long or they got the wrong procedure or the ambulance was late or whatever. My experience has been that people aren't always pleased with the answer they get, but I've yet to—here again, in the 18 years I've been in elected office—have a complaint about the process. The decision is one thing, but people seem to have been accepting of the process that's been set up by the hospital. Is there a reason that could not be done by other regions or towns or cities?

**Mr. Levine:** No, I don't—I was trying to suggest how you would structure it so it would be more effective, but I've heard lots of complaints about university ombudsmen.

**Mr. Flynn:** Is that right?

**Mr. Levine:** Yes. So it really does depend on the structure. University ombudsmen, if I can—I don't know a lot about hospital. I know a certain amount about American long-term-care ombudsmen. In the university system, they range from a legislative type—Laval has somebody who is actually the equivalent of a provincial Ombudsman because it's a legislated position. Other places have ombudsmen who only deal with student issues; they can't help employees, they can't help members of the public who have a problem with the university. Some are investigators; some are mediators. There are all kinds of different roles. I think it's a problem, if you're saying we want a full complaints system for municipalities, if you're just going to say they can do what they like.

**Mr. Flynn:** Is there a—

**The Chair:** Thank you. I'm sorry, Mr. Flynn. Mr. Hardeman?

**Mr. Hardeman:** Thank you very much. I just want to continue on with the comments about the Ombudsman and where you go after the Ombudsman. I think we would all agree, provincially, in Ontario, that's the end of the line. When a citizen has a complaint, the Ombudsman looks at it as to whether something can be done about it and that's the end of the line.

I'm just a little concerned. In your opinion, will how the Ombudsman is appointed and who they're working for have an impact on the public's confidence when they don't agree with what council has done and they know that the person they are going to complain to was appointed by council and works on council's behalf? Are they going to feel as confident that they're going to have their complaint dealt with fairly?



**Mr. Levine:** I think they could, but it does go to setting the conditions of independence. It really goes to that problem. I think you'd want an appointment process that wasn't—there's nothing about the appointment process in the bill, and you would want an appointment process that council actually makes the appointment and a significant majority of the councillors make the appointment. I think you really need something like that, as well as a fixed term that goes beyond council.

**Mr. Hardeman:** I would agree, and you mentioned the other issue about the conflict of interest and the need to deal with that. And you're right. I've been a number of years in this business, both municipally and provincially, and now in my office, when we get calls about municipal government, I would say what at least 50% of them are about is that they believe someone is in a conflict of interest, and presently there is no way of dealing with it, other than with the courts. In your opinion, does this bill provide any relief for that?

1750

**Mr. Levine:** Not really. If you want to deal with pecuniary conflict of interest, it may be that the municipality will empower its integrity commissioner to give an opinion, but the process is laid out in the Municipal Conflict of Interest Act. What we've seen in Toronto is that they've tried to divorce the pecuniary interest piece and the conflict-of-interest piece from the rest of the code of conduct because they know you have to deal with it through the Municipal Conflict of Interest Act. I do think it's a huge problem.

Can I just speak to "There are no problems in Oakville"? I don't know Oakville but I—

**The Chair:** I'm sorry, Mr. Levine. Your time has expired. I appreciate your being here today. It was a very entertaining and interesting delegation. Thank you very much.

Committee, our next delegation, the County of Middlesex, Western Ontario Wardens' Caucus, was unable to attend today. We are trying to reschedule them.

That brings us to the point in our committee where we are going to be dealing with Mr. Hardeman's motion, which is with regard to giving the Ombudsman an additional 15 minutes. Mr. Hardeman, did you want to speak to the motion?

**Mr. Hardeman:** Thank you very much, Madam Chair. The motion is self-explanatory. When the Ombudsman was in today to make the presentation as it relates to the position of the Ombudsman as in the bill, I think he was quite clear that he had more to say on other parts of the bill that I think we should hear.

The parliamentary assistant suggested that it wasn't necessary because the Ombudsman has spoken to the minister and the minister has taken that into consideration as he's preparing amendments and so forth, and I'm quite prepared to accept that as a fact. At the same time, the Ombudsman's coming here made a point that he would like to have the opportunity to speak 15 more minutes on other issues within the bill. So, obviously he must not be as convinced as the parliamentary assistant

that the minister has bought into the argument and that he's dealing with the issue.

Since we have scheduled the time to hear delegations, we have sufficient time to hear from the Ombudsman, and I think it would serve us all well to hear him point out what he believes are some of the shortcomings. That doesn't mean that the government side will change the bill because of what they heard, but I think it's important that all of us here, not only the members of the committee but also the public, in the interest of open, public debate, hear what the Ombudsman feels are the shortcomings of the bill, and that we can do our best as parliamentarians to correct it, for all of us and for the people of the province.

Lastly, I don't think it's unreasonable to make the comment that the Ombudsman's position on the bill and his reason for wanting to present are not necessarily the same as most of our presenters' who are speaking, based on how it will deal with municipal government. I think the Ombudsman's position is strictly to look at how it will handle the concerns of the general public as it relates to the new powers within the bill. So I think it's important that we hear all that we can from the Ombudsman to make sure we can make the best possible decisions for the people.

**Mr. Prue:** I'm in general agreement with what's just been said, with a proviso. We have five days of hearings scheduled. Are all of the time slots filled at this point?

**The Clerk of the Committee (Ms. Susan Sourial):** They're not all filled. One of the points in the sub-committee report was that latecomers would be taken on a first-come, first-served basis. So we've had a couple of late requests that we're in the process of scheduling. Sitting here, I can't tell you what happened in the office this afternoon, where we are at in terms of—

**Mr. Prue:** Okay, but as of before you left—

**The Clerk of the Committee:** There were spaces.

**Mr. Prue:** There were spaces. So if we were to do this, we would not be taking someone else's. I just want to make sure: We would not be taking away any other person's 15-minute time slot that you know of at this point.

**The Clerk of the Committee:** When I came here at 3 o'clock, there were spaces available. I do know that my office was working on filling those spaces. So what the situation is now, I don't know. I'd have to get back to the committee on what's available.

**Mr. Prue:** If I could, then, Madam Chair, I would agree with the motion on the proviso that no one else is displaced. I do recognize that every individual was given 15 minutes. However, the Ombudsman is raising issues that I do not believe are going to be raised by any other individual. His first 15 minutes was well used; it was a cogent and clear argument of a flaw in the bill in the minute and a half that I ceded to him. By not asking questions on what he'd already said, it seems that there was considerable information that may be forthcoming on this second application. If time permits and if no one is denied an opportunity, I would be more than happy to hear an additional 15 minutes from the Ombudsman.



**Mr. Duguid:** The concern I have with granting any deputant a second opportunity to appear is the precedent that that sets. I know it's not a legal precedent, just in terms of our procedures, but it's not providing equal treatment to all of our presenters.

There are a number of presenters that we heard from today. I'm sure that AMO would be offended if we were to give one party double the amount of time that we gave them, considering that they represent municipalities right across the province. I wouldn't blame them for being offended if we were to do that. I think we have to treat everybody equally. A 15-minute presentation doesn't give you an opportunity to, word for word, go through your entire argument. We're experienced members of the Legislature here. We're all capable of reading presentations and briefs. If the Ombudsman wanted to articulate his views to any of us, he would have an opportunity to do so—we all have open-door offices—over the course of the committee's considerations. We're considering this over an extended period of time. I think that the Ombudsman will have every opportunity to make his views known. In the interest of just equal treatment for all deputants, I don't think we should play favourites with one or the other. I think we should treat everybody fairly and equally.

**Mr. Hardeman:** I accept the arguments the parliamentary assistant makes, but the truth of the matter is that the Ombudsman is not a presenter presenting on the interest of his membership. He's a servant of the Legislature to make sure that the people of Ontario are being treated fairly and equitably by the province. So if he believes that the Legislation presently before this committee is not meeting the goal he was given as a servant of the Legislature, I think he has an obligation to present

that to us so we can deal with that as we go forward with the legislation.

I don't think there's a connection or a similarity between AMO presenting on behalf of the municipalities and a servant of the Legislature presenting on behalf of the people of Ontario, to that body to which he is a servant. I think it's totally different. Having said that, I see absolutely no reason why—and we've done it before in this committee on different bills, where exceptions were made for certain presentations because of the nature of their presentations—we would not use that time to our best advantage so we can make the best possible decisions. We have the time; we've agreed to the time. I have no more to say on that, but I would request a recorded vote on this motion.

**The Chair:** Any further debate? Seeing none, a recorded vote has been requested.

#### Ayes

Hardeman, Prue.

#### Nays

Brownell, Duguid, Flynn, Leal.

**The Chair:** The motion is lost.

I'd like to thank all the witnesses, members in this committee and staff for their participation in the hearing. This committee now stands adjourned until 4 p.m. on Monday, November 20, 2006.

*The committee adjourned at 1759.*





## CONTENTS

Wednesday 15 November 2006

<b>Subcommittee report</b> .....	G-873
<b>Municipal Statute Law Amendment Act, 2006, Bill 130, <i>Mr. Gerretsen</i> / <i>Loi de 2006</i>     <b>modifiant des lois concernant les municipalités, projet de loi 130, <i>M. Gerretsen</i></b> .....</b>	G-874
Association of Municipalities of Ontario.....	G-875
Mr. Doug Reycraft	
Regional municipality of Peel .....	G-878
Mr. Emil Kolb	
Mr. Patrick O'Connor	
Ontario Good Roads Association .....	G-880
Mr. Tony Prevedel	
Mr. Joseph Tiernay	
Ombudsman Ontario.....	G-882
Mr. André Marin	
Mr. Greg Levine .....	G-884

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### **Chair / Présidente**

Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)

#### **Vice-Chair / Vice-Président**

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)

Mr. Kevin Daniel Flynn (Oakville L)

Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)

Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell L)

Mr. Jerry J. Ouellette (Oshawa PC)

Mr. Lou Rinaldi (Northumberland L)

Mr. Peter Tabuns (Toronto–Danforth ND)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### **Substitutions / Membres remplaçants**

Mr. Ernie Hardeman (Oxford PC)

Mr. Jeff Leal (Peterborough L)

Mr. Richard Patten (Ottawa Centre / Ottawa-Centre L)

Mr. Michael Prue (Beaches–East York / Beaches–York-Est ND)

#### **Clerk / Greffière**

Ms. Susan Sourial

#### **Staff / Personnel**

Mr. Jerry Richmond, research officer,  
Research and Information Services

16  
23



G-37

G-37

ISSN 1180-5218

## **Legislative Assembly of Ontario**

Second Session, 38<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Deuxième session, 38<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Monday 20 November 2006

# **Journal des débats (Hansard)**

Lundi 20 novembre 2006

**Standing committee on  
general government**

Municipal Statute Law  
Amendment Act, 2006

**Comité permanent des  
affaires gouvernementales**

Loi de 2006 modifiant des lois  
concernant les municipalités

Chair: Linda Jeffrey  
Clerk: Susan Sourial

Présidente : Linda Jeffrey  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 20 November 2006

Lundi 20 novembre 2006

*The committee met at 1602 in room 151.*MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT DES LOIS  
CONCERNANT LES MUNICIPALITÉS

Consideration of Bill 130, An Act to amend various Acts in relation to municipalities / Projet de loi 130, Loi modifiant diverses lois en ce qui concerne les municipalités.

**The Vice-Chair (Mr. Jim Brownell):** Good afternoon, ladies and gentlemen. The standing committee on general government is called to order. We are here today to continue public hearings on Bill 130, An Act to amend various Acts in relation to municipalities.

For those witnesses with us this afternoon, I welcome you. Just to let you know, those who are out in the audience at the moment, you will have 15 minutes to make presentations and if time is available at the end, before the 15 minute are up, we will split that time between the three parties.

## SHEILA JACOBSON

**The Vice-Chair:** First this afternoon, I would like to welcome Sheila Jacobson. If you would like to come up, make yourself comfortable at the table, and state your name for Hansard as you begin your presentation, we'd appreciate it.

**Ms. Sheila Jacobson:** My name is Sheila Jacobson. I'm a citizen of Brampton, Ontario. I'm here today to make some recommendations on changes to the Municipal Act, I believe. I have 10 suggestions here. I have made copies for everyone so they can follow with me.

The first recommendation I have is to make voting mandatory by law at the municipal level. The turnout is between 20% and 25%. Those are the statistics on voter turnout, and that is unacceptable. We have to ensure that democracy prevails. Twenty per cent is not a democracy. As you can see, what I have explained after that suggestion is that as a result of this chronically low voter turnout, the majority of citizens who want to see a change in city and regional councils don't see any changes because they don't vote. The majority of citizens don't vote. We have the same group of people voting, election after election, and as a result of that the incumbents get

re-elected, election after election. Some of our city councillors have been on council for as many as 35 and 38 years. That's unacceptable. Today's Brampton is nowhere near what it was 38 years ago, so that council no longer reflects what Brampton is today. We are bursting at the seams at about 400,000 people.

To move on to recommendation 2, city and regional councillors should be allowed only two terms in office in any given position. I will leave the whole explanation that I have, but just to put it in a gist, the President of the United States is allowed only two terms in office, and he's the president of the most powerful country in the world. Why, then, are we allowing our councillors to remain on council ad nauseam, decade after decade. We need to put some boundaries on this so that new people get an opportunity to run city council. We have so many new generations of people and yet we see the same crowd, in and out, day in, day out, and we're just sick and tired of it. We need to ask the provincial government to put some boundaries on it and say, "You've had your turn, two terms at four years each. Eight years is a long time. Adios." But that means they can do two terms in any one position. So they can do two terms as city councillor, then two terms as regional councillor, and two terms as mayor. That is 24 years and I think that is more than fair.

To move on to number 3, candidates who have lost twice in municipal elections, running in any position, should not be allowed to run again in a municipal election. The problem we have in Brampton and Mississauga, which is what we have been watching closely, is that sometimes there are as many as 26 people on the ballot. Many of them are the same old suspects. They lose election after election but they will put down their 50 bucks or 100 bucks and put their name on the ballot. It splits the vote of good candidates. These people who lose all the time never get in, they don't even come close, but the really good candidates end up having to struggle with a split vote—26 ways, 11 ways—and sometimes not the best candidate gets in. So we've got to weed out this chaff. We don't have a party system at the municipal level. Parties get rid of these types of people, but in municipal elections the floodgates are open and they just keep on coming back. They just turn up in every election. We just cannot allow that to happen.

Number 4: The legal and political status of cities and regions should be changed to classify them as governments and not as corporations, and they should be



held accountable under the guidelines of the Canadian Constitution. What we've seen in the city of Brampton is that it has now been made a corporation of the city of Brampton. All of a sudden, there are these walls that go up. The minute we try to question any bureaucrat, civil servant, clerk or what have you, they behave as though they're not accountable to the people. They work for a corporation. They are no longer public servants. It is a very bad attitude. It sends a wrong message to the people who pay the taxes to run that particular body of governance. So we've got to change it. We've got to bring it back under the Canadian Constitution so that these people are held accountable under the laws of governance.

To move on to number 5, the chair of the regional municipalities should be elected directly by the voters of the region and not by the elected regional councillors. What has happened until now is that the regional councillors are voted in by the public. Then, in turn, those regional councillors turn around and, in an in camera voting session, elect the chair of the region of Peel or the region of Niagara, whatever the regions are. They vote in their pal, their buddy. It's the same chap. He's been around for decades. Nobody else seems to be able to get anyone else in. And he's not accountable to the public; he's accountable to his buddies on the council. We've got to break this grip that these people have had.

My family are visible minorities, fourth generation in North America. I am outraged that there is no representation on Brampton city council. There are 10 white people. They've been there forever. The one non-white person lost in this last election, but we've gotten a South Asian in his place. Nevertheless, at the end of the day, the council has not changed in over 35 years in terms of racial composition but the city of Brampton is over 51% visible minorities. You go into city hall or the region of Peel head offices and it doesn't even look like Brampton; it's like another zone altogether. We've got to change that by making sure that every one of these layers is accountable to the people, and we've got to put boundaries.

Number 6: There must be an opposition council put into place at municipal level to watch over the elected councillors. This is a serious problem, not just with the city of Brampton; we see it across Ontario. Our entire structure of Canadian government is to have a ruling party that has been elected into power and then another set of people that are called the opposition. We have it at the federal level, we have it at the provincial level, but we do not have it at the municipal level. What that does is give the councillors absolute power. And we know what absolute power does.

1610

Entire families that are related to councillors work in either the city of Brampton or the region of Peel. It's an inner club. It's an outrage, because there is no one to hold them accountable, there's no one to watch over them. We've tried to turn to Queen's Park. I've called the Premier's office, I've called Minister Gerretsen's office,

and we're told that the cities are on their own, the regions are on their own. You cannot throw away the key. You cannot leave people to their own devices. You must have accountability, you must have a shadow council, an opposition council, because it hasn't worked until now without an opposition. These people just go off and they do whatever they want.

We had a terrible situation last week in the municipal election. The city clerk of Brampton changed the voting process without clearing it with council; it was not even voted on. All of a sudden the voting process changed in a way that people were able to vote multiple times—five and six times. There is an uproar in Brampton. The newspapers in Brampton—the Brampton Guardian, page after page, is rife with these irregularities. And every one of the incumbents was re-elected with a huge landslide.

I'm not surprised. It's an inner clique. They make their own rules, they help their own pals, they keep coming back. The whole city is in an uproar, but no one is doing anything about it because, well, the city clerk has a right to change the voting procedure. It violated our democratic rights. I have tried to get some answers, and there are no answers to be had.

What they did is, they did not split the voters list alphabetically, so people were coming in, there were eight voting tables in every voting hall, and people were going from one table to the next—the same person. Someone with the name Brown would go to table number 1 and the voters list was from A to Z, the full list. The next table had the full list from A to Z. So Mr. Brown would go to table 1, table 4, table 6, come back hour after hour and vote seven or eight times, as many tables as there were.

I feel as though I'm living in a Third World country entirely on its own. I don't feel I'm living in Canada; I feel I'm living in the country called Brampton. Perhaps I should ask for a passport from Brampton, because they seem to be entirely left to their own devices.

Number 7: There is a long history of rogue bureaucrats in both regional and city government. I can't speak for Toronto, although we have seen some news stories in recent years, but in Brampton and the region of Peel it is an ongoing nightmare. Week after week, month after month, we hear outrageous stories that are well founded—there is proof, there is backup. What happens with these rogue bureaucrats—not all of them. I think the majority of the bureaucrats in these municipalities are good, hard-working employees. But there are a certain number of them that use the publicly paid legal departments and so on to intimidate citizens. They grant contracts to their friends over and over again. They bully people. They go off on junkets. There are no laws, apparently. We've investigated it in Brampton. We looked into this, and we discovered that there are no laws in place to question the decisions of bureaucrats to see why they're granting contracts to certain favoured contractors over and over and over again. Minorities have tried to get those city contracts—very lucrative contracts—but they can't break in. There's a glass ceiling.



It's the same bureaucrats making the same decisions. When we watch where these bureaucrats go, they are off on junkets. We have proof. We know of stories where they've taken off on golf tournaments and so on, but we're not allowed to question it because there are no laws; they can do whatever they want. We want something in place where they can be prosecuted, held accountable. And if we find that they're giving contracts to their pals, to their buddies, it's got to stop.

Number 8: The voting process in municipal elections should not be left up to bureaucrats or civil servants in municipal government. We should have a third party. I'm a corporate accountant, and I have the highest respect for my profession. The Academy Awards in the US, I think we all know, are run by some of the major CPA firms in the US, usually PricewaterhouseCoopers. There's a reason for that. There's a great deal of money involved in these movies that are up for Academy Awards.

Similarly, there's a lot of money involved in running a city. I think we have to be careful and protect the rights of taxpayers by making sure that the people who are elected through the voting process—that that voting process is protected by perhaps a CA firm, one of the Big Eight or whatever. I think now it's the Big Five. We need to have it at arm's length.

In this last election, it was an absolute disaster. The city clerk changed the voting process without permission, without anything, and people were voting six and seven times, multiple times. It's just unacceptable. This is not a democracy.

(9) The citizenship of voters should be verified more thoroughly. This is a huge problem in areas where there are newcomers settling in, such as in the region of Peel. Every election, not only are there stories that I dismiss and discount, but if I've seen it myself, I have raised my voice. I have gone to the electoral officers in the voting station and said, "These people don't look like they live here. They've got tags on their cars that say Mississauga something or other." We're in Brampton, and I'm told, "It's up to them. We operate on an honour system." How naive is this, working on an honour system? We are expected to use the tools we have at hand, put some boundaries on this and demand some kind of proof. Nobody was asked for proof of where they lived; their IDs weren't even checked. I brought my driver's licence, my photograph, my address to prove that I lived in Brampton, but there were countless people—this happens in municipal, provincial, federal elections. It's an on-going abuse of the system.

(10) Finally, every candidate running in a municipal election must be required to pass an oral English language test which is to be administered by a local community college English language instructor.

**The Vice-Chair:** I just would like you to know that you have one minute left.

**Ms. Jacobson:** Okay.

I know that in recent years we all shy away from any sensitive topic that may seem to be discriminatory, but let me assure you, I'm a visible minority and I speak

standard Canadian English. When I have to sit there and sift through candidates who can barely say hello and goodbye, then I think I have a problem with it. I think what we're doing is a disservice to these people. We're not helping them to assimilate. We're letting them carry on in whatever form of English they think they're speaking. I think we need to help the people who represent these different minorities to speak proper English so that we all have a level playing field. Thank you.

**The Vice-Chair:** Thank you very much.

**Ms. Jacobson:** I'm prepared to take questions.

**The Vice-Chair:** Well, there's 19 seconds, so there really isn't time for questions here. Thank you very much for you presentation.

#### CITY OF LONDON

**The Vice-Chair:** Next, we have the city of London, Grant Hopcroft, the director of intergovernmental and community liaison. I would like to welcome you. Certainly, I have met Mr. Hopcroft. He's the great-great-grandson of the fifth Premier of our province, so I welcome you as being the great-great grandson of that esteemed leader of our province.

**Interjection:** He doesn't get extra time—

**The Vice-Chair:** No, he doesn't.

Mr. Hopcroft, you have 15 minutes. Please state your name for Hansard.

**Mr. Grant Hopcroft:** Yes. I'm Grant Hopcroft, as you mentioned, director of intergovernmental and community liaison for the city of London. To my left is James Barber, city solicitor for the city of London.

I'd like to begin by thanking the government for conducting this early review of the 2001 act. Overall, Bill 130 is an improvement to the existing legislation. However, we do have a number of concerns that we'd like to address in the short time that we have available. Those are (1) the issue of open meetings; (2) recognition of the maturity of local government, and you've heard about that from AMO already; (3) a request for an amendment pertaining to board of control, which is at the end of our paper and which addresses some desire on the part of council to see a different requirement for changing the structure of council.

Diving right into the open meetings, we've had some experience lately with a court case arising out of an interim control bylaw. I'll refer to it here in the presentation as the RSJ case. It's been to the Court of Appeal of Ontario and was argued last week in the Supreme Court of Canada. They have reserved their decision. There are a number of issues which were raised in the Court of Appeal's decision that we'd like this committee to consider, because they raise, I think, a number of pressing questions for how municipal governments can conduct themselves in the coming years. It is unfortunate that many of the proposed amendments, particularly as they pertain to section 239 of the bill, leave many of the issues which have been resolved legislatively in other jurisdictions to be resolved in Ontario through litigation



after meetings have occurred, with the attendant uncertainty, delay and legal cost to the taxpayers.

1620

For example, the Court of Appeal stated, "There is nothing in section 38(3) of the Planning Act to suggest that consideration of an interim control bylaw can be done in a closed meeting. Section 239(2) of the act does not list interim control bylaws as one of the exceptions to the requirement that meetings be open to the public."

Neither Bill 130 nor section 239 references any draft bylaws that can be considered in a closed meeting, despite section 6 of MFIPPA and despite the requirement that a municipal council act by bylaw under section 5(3) of the act. No draft bylaw can be considered at a closed meeting, even in relation to the subject matters in the exceptions in section 239(2), based upon the Court of Appeal's decision. It is recommended that Bill 130 specifically permit at least the consideration of draft bylaws which relate to the exceptions that are already set out in section 239(2).

The second point I'd like to raise, again pertaining to the RSJ reasons by the Court of Appeal, is related to a report prepared by our planning staff which was prepared to supplement the report of the city solicitor: "... the Panzer report cannot be said to be litigation or potential litigation"; "the committee of the whole may have been entitled to have discussed the solicitor's report in closed session, but appending a solicitor's report to other documents, such as the Panzer report, does not operate to cloak all of the documents with privilege...."

For those of you who have municipal experience, interim control bylaws can be and often are an extremely litigious area for municipal councils to delve into, and to suggest as the court did, I think, reflects a lack of understanding of the nuts and bolts of how municipal government works.

Neither Bill 130 nor section 239 provides any direction as to who may communicate with council, what the scope of permitted communications is, or whether the statute applies at all to confidential communications which are not discussed at a closed meeting. The Court of Appeal's decision suggests that administrative staff may not communicate information provided to accompany a solicitor's report: legal advice without context. It is recommended that the bill permit communications from administrative staff that fall under one of the exceptions or that are necessary for solicitor-client privileged advice.

The next point pertains again to section 38(3) of the Planning Act. The court said, "There is nothing in section 38(3) of the Planning Act to suggest that consideration of an interim control bylaw be done in a closed meeting."

Again, neither Bill 130 nor section 239 provides any direction for closed meetings as to what matters which a municipality is not required or permitted to disclose under another statute may be considered, such as a draft bylaw, including a draft interim control bylaw provided under section 6 of MFIPPA; personal information, which is again exempt under section 14 of MFIPPA; or confidential business information of third parties, section 10

of MFIPPA. It is recommended that Bill 130 identify what matters under other statutes which a municipality is required or has a discretion not to disclose can indeed be considered at a closed meeting.

Again, the Court of Appeal stated in the RSJ reasons as follows concerning sanctions for breach of section 239 in an application under section 273(1): "We are of the view that the motion judge ought to have quashed the interim control bylaw."

Our concern here is that neither the bill nor section 239 contains any provision describing what the sanctions are for failing to comply with that section of the act. It is recommended that the bill identify what the sanctions are for a breach of section 239.

Again, the Court of Appeal in our case suggested that "... a municipality need not give prior notice or hold a public meeting before it passes an interim control bylaw. However, the meeting in which council is to consider and vote on the interim control bylaw is to be open. In the face of the 'draconian' nature of an interim control bylaw and the reduction in rights of affected persons by virtue of section 38(3) of the Planning Act," the court felt there was an even greater need that the meeting in which the bylaw was discussed be open to the public. However, neither Bill 130 nor section 239 contains any provision describing what considerations shall apply to the granting of a remedy, or what the standard of review is for a court reviewing a council's decision to conduct a closed meeting. It's recommended that the bill identify those considerations and what the standard of judicial review is for such decisions.

Fourth, the court stated that in the space of eight minutes, council passed the interim control bylaw that I've referred to before and 31 other bylaws. There was a complete absence of public debate or discussion on the interim control bylaw or the other bylaws, reinforcing the inference that the committee of the whole had already discussed it. Again, neither the bill nor section 239 contains a provision describing the quality or quantity of discussion following a closed meeting. We would request that the bill identify whether there is indeed such a requirement for discussion in public of matters discussed at closed meetings. Neither the bill nor section 239 contains a provision providing for a summary means of disposing of questions concerning compliance. It's not clear how much litigation such a provision could avoid, but it could result in substantial savings to the taxpayer. It's recommended that Bill 130 establish a summary procedure for determining compliance which does not burden ratepayers or communities with excessive costs to resolve issues regarding compliance.

Although the court quashed our interim control bylaw on appeal, it's interesting that the Ontario Municipal Board dismissed all appeals concerning the same bylaw in decision 0780, which was issued. They stated at that time, "The board, having considered all of the evidence in this regard, concludes that the purpose and intent of section 38 was followed by the city of London." Neither the bill nor the existing act contains a privative clause



limiting the scope of judicial review where there is a statutory appeal, such as this one to the OMB. We recommend that such a privative clause limiting judicial review to circumstances where there is no alternative remedy be considered.

I'd like to move on at this point to the issue regarding the material advancing decision-making. That is something that we consider to be very much in the eye of the beholder. While we welcome an attempt to move in that direction, again, there's no legislative standard or jurisprudence that we've been able to find where judicial review of legislative activity is based upon whether discussion materially advances the decision-making of a legislative body. We would suggest that the standard of review should reflect deferential treatment of decisions of municipal councils.

On the issue of maturity of local government, we're supportive of the position put forward by AMO last week.

I'll move on to the last point so that there's some time for questions, and that is with respect to our request for reform, pertaining to our board of control.

The board of control of the city of London was continued under section 468 of the current act. Also continued was the regime under part V of the old Municipal Act, regarding elimination or abolition of boards of control such that a two-thirds majority vote of council is required to eliminate a board, while the structure of the rest of council can be determined on a simple majority. We are seeking support for an amendment that would change this two thirds requirement to a simple majority.

I'd like to thank the committee for its attention. We have a table of other amendments that we haven't had time to address in our oral submission for your information as well. We certainly welcome an opportunity to follow up in discussions with ministry staff on any of these amendments, if there are any questions.

**The Vice-Chair:** Thank you. We have about a minute and a half for each party, so we'll start with Mr. Hardeman.

**Mr. Ernie Hardeman (Oxford):** Thank you very much, Grant, for your presentation. I noticed most of the presentation deals with the open and closed council meetings, though it's a little bit different in London's situation than some of the others we've heard. Generally, during the past election, you had a heated debate in London. Maybe you did hear it, but I didn't hear anybody asking for the ability to have more closed meetings or tell the public, "Vote for me, and I will be looking for getting more closed meeting at council." Did that happen, and if not, why is it that that's the number one issue in this bill, to have more closed council meetings?

**Mr. Hopcroft:** This issue has cost the taxpayers of the city of London a substantial amount of money to be litigated. It's an issue that we require some clarity on. We're seeking that clarity in the bill. We would suggest that it is appropriate for councils to hear legal advice in closed session. To suggest that you have to hear that legal advice entirely without context of the matters pertaining

to that legal advice, we feel, defies logic. We're awaiting the decision of the Supreme Court of Canada on that. But the act is currently open for review and we're asking the government to address it, to bring clarity and some common sense to it.

1630

**Mr. Michael Prue (Beaches–East York):** You talked about the closed meetings, and I must say that I share some of the concerns Mr. Hardeman has expressed. But there's another provision in here that I've tried to ask each one of the deputants about. There's a provision in here that would allow for members of council who are not present at meetings to vote by telephone, by hookup. I've given the anecdote of sitting on a beach in Acapulco with a drink in one hand and a phone in the other and voting. What's the city of London's position on members not having to be present to vote?

**Mr. Hopcroft:** I know this is an issue that has been discussed previously. I guess we've trusted voters in the last municipal election to cast their votes by mail without having to be present in a polling place to cast their vote. While I suppose the Acapulco example has some traction, there's also the example of sudden matters that arise that need to be dealt with by municipal councils and, to the extent that if someone is away on a business trip or for other reasons, they would be deprived of the opportunity of representing their constituents, that would be a concern.

Just on the open meetings issue, we certainly aren't trying to hide anything from the public. I think the current act does acknowledge that there are legitimate reasons to go in camera to protect the interests of the taxpayers. I note that certainly the provincial and federal governments have the opportunity to discuss matters in caucus. They have an opportunity to discuss matters in a variety of forums that are not public, and we feel we deserve the same consideration.

**Mr. Brad Duguid (Scarborough Centre):** In the short time I have, I'll just make a few comments and hopefully there will be time for a response. I very much appreciate the detail of your presentation. A lot of it is fairly legal in its context. I'll assure you that we'll take a close look at it and share it with our staff, whom I think you've probably been in contact with on some of this stuff already.

**Mr. Hopcroft:** Yes.

**Mr. Duguid:** My comments are around the fact that what we've done here, for the first time, is ensured that there's a mechanism and a process for citizens to be able to complain when they feel that a meeting has been taken in camera or in private that shouldn't be. What we've also done is listen to AMO and to the municipalities that we've heard from right across the province that have said, "It is difficult for us to go into a session where we have to brainstorm, where we have to do some strategic thinking, where we may have to think strategically about a plan to maybe take on another level of government," but, right now, under our laws, they can't do that. We're trying to give them the ability to arrive at these decisions,



not necessarily go in camera—they can't make decisions in camera—but the ability to be briefed, to have a frank discussion about strategic issues. I think that's certainly going to be an improvement to what we have now. Would you agree?

**The Vice-Chair:** You've basically run out of time.

**Mr. Hopcroft:** Certainly that's welcome, but it would be very helpful, to avoid lots of money being spent on litigation, to have a better definition around what "materially advances" means, because it's very much in the eye of the beholder.

**The Vice-Chair:** Thank you very much.

#### CITY OF BRAMPTON

**The Vice-Chair:** Next we'll have the city of Brampton. We have Mayor Susan Fennell. Please make yourself comfortable at the table. As with the other deputants, please state your name and title for the purposes of Hansard.

**Ms. Susan Fennell:** Good afternoon, Chair and ladies and gentlemen of the standing committee on general government. My name is Susan Fennell. I am the mayor of the great city of Brampton, and with me today is Mr. Clay Connor, director with legal services for the city of Brampton. On behalf of council and certainly the citizens of our city, I thank you for this opportunity to speak on Bill 130, which is the Municipal Statute Law Amendment Act.

My purpose today is to inform you of Brampton's position on Bill 130, and perhaps you could refer to the binder under the tab "Bill 130." As committee members appreciate, reform of the provincial-municipal relationship has been a priority for successive governments. It's not an exaggeration to say that dozens of attempts have been made to rationalize service delivery, funding and governance responsibilities between our two levels of government. We are pleased that Bill 130 starts with the premise that municipal governments are mature, accountable and able to manage our own affairs.

My comments today therefore will focus on our support for the direction that Bill 130 takes for municipalities and some suggested amendments which will, in our view, strengthen the bill and improve its effectiveness. The council resolution, staff report, this deputation and our suggested amendments are included in this binder as our submission for your consideration.

Brampton council supports the amendments to the Municipal Act that provide greater autonomy for municipal government. Greater autonomy empowers municipalities to be more self-sufficient and therefore more sustainable. Bill 130 achieves this by (1) providing broader general authority; (2) providing greater onus on municipalities to establish policies in keeping with provincial standards and objectives, which is a welcome departure from provincial micromanagement; and (3) providing greater responsibility for municipalities to be accountable and transparent.

Therefore, Bill 130, we would say, is a positive step towards recognizing municipalities as a responsible order of government. However, our review of this bill, revealed inconsistencies in the legislation that contradict what we believe to be the spirit of Bill 130 by limiting or removing municipal authority.

Perhaps I'll take a moment or two and highlight these inconsistencies. Section 451.1 provides the Lieutenant Governor in Council with the ability to suspend the operation of municipal bylaws. This section creates uncertainty for municipalities to enact bylaws. In the absence of a demonstrated need for the Lieutenant Governor to have such broad powers, many municipalities, including my own, would ask the government to please provide examples of when this intervention would be necessary. In our view, this section is inconsistent with the government's stated objective to empower municipalities to manage programs and services within their jurisdiction.

Like my municipal colleagues across the province, I have always been accountable for decisions of council and will continue to be so, but the policy intent behind this provision in section 270 is unclear. Municipalities are already required to comply with the legal and procedural safeguards built into the statute and common law to protect a person's rights, including property and civil rights. The legislation however in section 239 states that meetings may be closed when the subject materially advances the business or decision-making of the council.

Brampton is concerned that this language is unclear and if left open to interpretation may lead to litigation. If the intent of the subsection is to allow for activities like councillor education and training, orientation and strategic planning or, Brad, as you said, council briefings, then the act should specifically please say so.

The proposed subsection 239.2(7) requires the investigator to report only where there has been a contravention of section 239 or a procedural bylaw passed under subsection 238(2). We believe that the investigator should be required to report the results of all investigations but should also have the ability to refuse to conduct an investigation where it is deemed to be frivolous or vexatious.

Section 290 of the Municipal Act requires every municipality to prepare a balanced budget. On January 1, 2009, in accordance with the new Public Sector Accounting Board standards, municipalities will be required to account for assets on an accrual or depreciation basis. Covering such depreciation expenses has the potential to raise property taxes to achieve a balanced budget.

#### 1640

To avoid this additional burden on taxpayers, it is suggested that the province consider the implication of the new Public Sector Accounting Board standards for municipal budgeting and therefore make the appropriate changes to section 290. Alternatively, the province must provide municipalities with appropriate funding to insulate our property taxpayers from the impact of this provincial change.

The proposed section 158 gives the Minister of Municipal Affairs and Housing broad powers to make



regulations exempting any business from a licensing bylaw and to impose conditions and limitations on the powers of a municipality to provide for a system of business licences. This will have significant consequences for a municipality as well as diminishing the authority given to municipalities in the Municipal Act.

As a matter of respect to municipal partners, it is suggested that section 158 be amended to require the minister to consult with the municipality prior to exercising this power. It is incumbent upon the minister and government to demonstrate why a sector or business class should be exempted from paying their fair share. There's no evidence to suggest that municipalities will inappropriately apply their discretion when setting licensing provisions for their municipalities.

Bill 130 does not allow municipalities time to complete the necessary work before the new sections come into force. It is suggested that separate proclamation dates for sections 239.2 and 270 come into force one year after Bill 130. This time period is consistent with that given to complete the preparations for the Municipal Act, 2001.

That concludes my overview of what we believe are inconsistencies in the legislation. Our suggested amendments to address these inconsistencies are attached to the end of the document.

The amendments to the Municipal Act that are in Bill 130 are important tools to enable municipalities to be more autonomous. Brampton's suggested amendments ensure that municipalities are recognized as a responsible level of government accountable to our citizens.

However useful these tools might be, amendments to the Municipal Act do not replace or mask the need for a reliable and stable funding source for municipalities. The current fiscal situation is simply no longer sustainable. A long-lasting solution must be developed. I urge the province to move forward with addressing the fiscal imbalance that occurs between the province and the municipalities. Until such time as the financial stability of municipal government is realized, there cannot be true autonomy and accountability to taxpayers.

The province underwent a facilitated process with the region of Peel to determine a government model that reflected the needs and interests of all taxpayers. The province opted not to adopt that approach after it was thoroughly researched and instead imposed a Queen's Park solution. Hopefully, the provisions of the new Municipal Act will prevent the province from taking a similar approach to other municipalities.

I thank you for your attention. I'm happy to answer any questions you may have.

**The Vice-Chair:** Than you. We have about two minutes each, starting with Mr. Prue.

**Mr. Prue:** You asked that we clarify the open meeting provisions. Are you seeking to have more open meetings or less open meetings? We just heard from Mr. Hopcroft and from a deputant from Brampton, both with diametrically opposed views, I think, on whether the meetings are open enough. What is your position? Do you think there's a balance here?

**Ms. Fennell:** I think this speaks to our submission. We're seeking clarity. Spell out what is appropriate to be closed and what is not appropriate, and we will abide by the rules. If you're allowed to have more closed meetings, but it's not very carefully spelled out for what purpose or for what position, then you could compromise the very integrity of the system you're trying to improve.

**Mr. Prue:** I think this may, in fact, be what happened in London. That's the way I see it, anyway. It's not clearly spelled out, so the courts grab hold of it and London finds themselves out many thousands of dollars.

**Ms. Fennell:** Well, currently we're bound by very strict guidelines of what can be in camera or not. In the city of Brampton, we read every specific item on that motion before we go in camera. No item can be added in camera. Once you're in camera, no other subject can be discussed, unless you've publicly stated the subjects you've added to the agenda, and then you have to come out of camera to report. So the concept of being able to meet with five or six members of council to explore ideas, and whether that should be done in closed session—currently, it's illegal for me to meet with six members of my council to discuss an upcoming council meeting and call it a briefing. That would have to be declared, therefore, in a public meeting. We'd all come to the mayor's office, perhaps. In Brampton, we simply haven't had briefings. We discuss all of our business in the open forum of council or committee, which is a public forum.

**The Vice-Chair:** Thank you. We'll move to Mr. Duguid.

**Mr. Duguid:** Madam Mayor, congratulations on your resounding victory a couple of weeks back. You're back again for four years now, so we congratulate you for that.

As usual, Brampton comes forward with a very in-depth review of what we're doing. We'll take a very hard, long look at some of the suggestions you've made here. Some I haven't heard from others, so they're original, and some we have heard.

My question to you would be, do you support the direction we're going in, in terms of the relationship with municipalities? I think this is one example of this. We've uploaded some costs in terms of public transit. We've uploaded some costs in terms of land ambulance. We've uploaded some costs in terms of public health. We're back in the housing business. So we're going, I believe, in the right direction there. Through this legislation, we're trying to give municipalities more authority, more autonomy, and recognize them as mature levels of government. Do you support that direction? Do you think we're going in the right direction? I recognize there's a need for more following this, but do you support that direction?

**Ms. Fennell:** I'll repeat, the tone of our submission is that we support the direction, but Bill 130 contradicts itself with its own inconsistencies. The bill is intended to provide more autonomy, yet it introduces clauses that take away that opportunity. That's why we made some suggestions where, in the spirit of what you're intending



to do, there are some inconsistencies that therefore conflict with your effort. I think that's why we have these consultations, so that we can get it right. We've just tried to be helpful.

**The Vice-Chair:** Mr. Hardeman.

**Mr. Hardeman:** I just quickly want to touch on the closed meetings. It has been an item in just about every presentation we've had to committee, one way or the other. Your presentation says that we should get it right, that if we're going to expand it, we should, as London also requested, more clearly define what more can be done in closed meetings than what you presently do.

In Brampton, has there been any request or any great pressures to increase the closed council meetings from what you presently do? You pointed out how it works in Brampton. Is that working fairly well? Or do you find there are a lot of times, for whatever reason, where you need more ability to go into closed session?

**Ms. Fennell:** It's not an issue, and it hasn't been an issue, for us in Brampton. It denies you the opportunity to sit with five or six members of council and say, "What do you think we ought to do?" So we do that in a public committee, and that's fine. We operate according to the way the act is now. Those subjects are stated quite publicly at a televised public council meeting, and those are the only subjects we discuss in camera. If your question is, are there other subjects that come into play where people wish they could? That's never been an issue in the city of Brampton. The rules are there, and we follow the rules.

All we're saying is, if the rules are changed, please spell them out very carefully, because we follow the rules very rigorously in the city of Brampton. We think right now that if you're broadening that opportunity, I'd say that it's unclear what would be eligible or not eligible to be discussed in camera under the new act. It's not uncommon to have a situation where somebody departs from one discussion into another topic, and I as mayor or the clerk will say, "Excuse me. Stop the meeting. That does not follow a discussion you can have. When we go outside of camera, you have to add it to the agenda or bring it to the next council meeting." That's the discipline with which we chair and lead council in the city of Brampton. So we just want the rules. We'll apply the rules, but they just need to be really clear.

**The Vice-Chair:** That brings us to the end of the deputation. Thank you for your appearance here today.

1650

#### READY MIXED CONCRETE ASSOCIATION OF ONTARIO

**The Vice-Chair:** Next we have the Ready Mixed Concrete Association of Ontario; John Hull, president. Once again, welcome. Make yourself comfortable at the table. You'll have 15 minutes. If there is some time remaining at the end of your presentation, we'll divide it up, as you've seen. Please state your name and position for Hansard.

**Mr. John Hull:** Thank you. I guess the good news here is, as I just heard, that we're not going to talk about closed meetings, so I'm not going to talk about closed meetings.

Mr. Chair and ladies and gentlemen of the committee, thank you very much. My name is John Hall. I'm the president of the Ready Mixed Concrete Association of Ontario.

The Ready Mixed Concrete Association of Ontario represents 95% of the concrete industry in Ontario. Just by way of background, we have about 4,000 employees and 3,000 trucks with a replacement value of \$180,000 each. About 96% of our membership are independent owner-operators, 4% being vertically integrated; in other words, owned by cement companies.

We are also here on behalf of a larger group of contractors and service providers. I've asked Minister Gerretsen to meet to discuss some of the issues. You have my letter in front of you. By no means am I going to read this letter word-for-word. I'd just like to give you a brief number of comments based on what we know so far of Bill 130.

We were made aware three weeks ago of this issue. With business being what it is, you can't always address what you need to address, but certainly I wanted to have the opportunity to bring to you some of our concerns and a couple of recommendations.

Our basic concern is that we don't know why the authority is changing the Municipal Act to give the municipalities more authority, particularly for the opportunity of competing, in our view, with private sector service providers. That's kind of it in a nutshell. We don't understand why the government would want to be able to go into competition with the private sector. We see big potential for job loss in the private sector. We see significant private sector job loss in specifically northern and smaller urban areas. Business failures might be expected, and that's certainly something that we don't want to see. Why does the government wish to move in this direction? Why do municipalities require sweeping new powers allowing them to move towards what we would consider traditional private sector work?

There are issues with public accountability; I won't go into them. As some of you have probably heard—many of them before or here today—we don't understand why there's only one public meeting to present a business case for establishing a municipal business corporation. We don't see that there's public accountability for these business corporations to even show a profit. There's very little public oversight, in our view.

We believe that, under the proposed regulations, if a municipal business corporation wished to use its regulatory authority to compete on an inequitable basis with local private-sector contractors and service providers, the private sector would simply not be able to compete. That, to us, just flies in the face of the government trying to support local businesses.

There are many sections in the act that I won't go into because of time. I don't profess to know the regulations



word-for-word. In fact, we haven't even seen the regulations. We have only seen bits and pieces of the regulations, which is also fairly disturbing.

I have two requests that I'll talk about anyway. We would request a six-month delay in implementation of any changes to the Municipal Act, as we were only made of this government's intent a short while ago. A further request is for a minimum six-month period to be able to properly review and assess the proposed regulations. As regulations are put together, it is of great benefit to bring in industry expertise in whatever pieces of legislation would be appropriate. But there doesn't seem to be any opportunity here to bring them together in time to do anything to affect legislation. Again, we would request a six-month delay in implementation and we would request a six-month period to be able to properly review and comment on the regulations.

Thank you very much. I'll answer any questions.

**The Vice-Chair:** We have about three minutes for each party.

Mr. Hardeman? I think I did a little mistake previously in the rotation.

**Mr. Duguid:** Either way. As long as we've got three minutes, it doesn't matter to me.

**The Chair:** Okay, you all have three minutes. Mr. Duguid, then. We'll start with Mr. Duguid.

**Mr. Duguid:** Thank you, Mr. Hull, for your presentation today. I'm trying to, I guess, put in—I hate to use the word “concrete”—more concrete terms the information you're trying to exchange with us. I was a municipal councillor for about nine years and was responsible for setting up at least a couple of municipal corporations for a variety of reasons. You're concerned about direct competition with the private sector. Are there any examples now of cities that have set up corporations that are competing directly with the private sector in Ontario? Are there any municipalities that appear to be expressing an interest to do that? I haven't heard of any, but it may well be that there are some out there that I haven't heard of.

**Mr. Hull:** At present, we know of no concrete facility that's owned by a municipality. I can't speak to a broad base. I don't know if a municipality is in competition with any other business. It has been practised in the past number of years probably, but not for 10. I think the most recent municipality was the city of Hamilton, which was I think the last municipality to be in the concrete business itself; that, in the light of having four other ready-mixed producers or four private businesses in the region itself. So they got out of that. There were a few examples a number of years ago, but still it's very alarming to us to be able to think that somebody—“I don't like the price of concrete; therefore, I'm going to get into the business myself.” Concrete is not a low-tech industry. It's perhaps not as high-tech as putting an Intel chip together, but it's reasonably high-tech. It's capital-intensive. We obviously have people who are landowners and employers and taxpayers and so on.

Again, we just don't understand the premise, if it can be read like this—and it can be, from what we know—

where a municipality would develop a corporation to say, “Okay, let's go into business with a concrete producer or a road builder or somebody to provide window-cleaning service,” because the legislation, to our mind, is written like that, with no justification.

**Mr. Duguid:** Do I have more time, Mr. Chair?

**The Vice-Chair:** About half a minute.

**Mr. Duguid:** I know of at least a few examples where, under the old regime, the municipalities had to come to the province for private legislation to set up corporations to do something that could be considered as a private enterprise. But those proposals were totally in the public interest and were well publicized, well documented. There were public meetings held. In fact, I don't think there were any objections from anybody to those particular proposals. The whole idea behind this legislation is to see municipalities as bona fide levels of government, accountable to the people who elect them. But I can assure you, we'll take a look at your concern and see if we can square that with the principles behind this bill.

**The Vice-Chair:** Okay, Mr. Duguid. You're out of time.

**Mr. Duguid:** That's all I have to say.

**Mr. Hardeman:** Thank you very much for the presentation. It's a little different from some of the ones we've heard thus far at the committee. Dealing with the corporation part of it, as the parliamentary assistant suggested, there are things in the municipal sector, such as garbage collection, where two municipalities want to do it together and the only way that they can work that on a proportionate system is to put it under the Corporations Act and make it an independent corporation for a public service. I think most would agree that that's not a bad approach for providing municipal services.

If this act were changed to limit the type of corporations that the municipalities could set up that had to be for municipal services, would that solve the problem of the association?

**Mr. Hull:** That's a good question. It probably could, although I'd hate to be on your side trying to hear from people on my side as to which sectors would be exempt. It's difficult from the point of view—as I put down here, municipalities are required to have only one public meeting to present a business case so they can hear all the issues, and then they can go away and do whatever they want, basically.

1700

In the issue of two waste management systems getting together for a municipality, sure, it might make sense to someone, but perhaps not to the private companies that are out there. So how do you justify? How do get all this information, the expertise, from the local industry to say it's either good or it's not good? There's no process to do that.

**Mr. Hardeman:** One of the other things that I've heard about private corporations—we have some now that deliver hydro in municipalities, who are the delivery agents. Now, instead of what used to be the PUC, it's a private corporation. And one of the concerns that I've



heard from my residents is that the information about the corporation's function is no longer public information. You talk about the private meeting, one meeting being required. Each year when the financial statement comes out, it comes out to the municipality, not to the public. If it were changed so that all corporations that were governed by the new Municipal Act would have to report to the ratepayers rather than the council, would that help any? So everybody would know whether they were subsidizing it or not?

**Mr. Hull:** I think it defeats the purpose. If the result was that they were in fact subsidizing—I mean the municipal corporation is under no auspices to make a profit or even to break even. It's kind of a root system to say, "Well, let's not go into business if we are going to lose money" because that falls against what the municipalities are for. But at that point, it's too late.

**Mr. Hardeman:** But they would have to, then, each year report losses if they were subsidizing it through the tax dollar. They would have report that to the people who were paying the tax dollar. And if I was going to continually lose, I won't be too long telling my local elected officials that that's not a business I wanted to be in.

**Mr. Hull:** I understand what you're saying, but at that point it's probably too late because somebody might be out of business already. They shouldn't be allowed to be in business at a loss at all.

**The Vice-Chair:** Okay, that brings us to the end of Mr. Hardeman. Mr. Prue, you're next.

**Mr. Prue:** Yes, I'm a little bit perplexed here. At the bottom of the second page, you say: "We believe that under the proposed regulations if a municipal business corporation wished to use its regulatory authority to compete on an inequitable basis with local private sector contractors and service providers, the private sector would simply not be able to compete." Are you saying a municipality that sets up a corporation can and will undercut you? Usually I hear everybody saying, you know, "Let's farm out." You heard in Toronto in the last election just last week, "Farm this out, don't have the local people do it, don't have the municipality do it, give it to the private sector, and we'll save money." You're saying exactly the opposite.

**Mr. Hull:** If there's no requirement to make a profit, to innovate—you lose innovation as soon as you do what we're talking about, develop a Corporations Act. There's no innovation; I mean innovation completely stops and competitiveness completely stops. It's just the same old, same old. And that's going to be very harmful for the taxpayer, but at some point it's too late; the horse is out of the barn already. If a municipality has no guidelines or restrictions to make money or even to break even with any public accountability, it's too late.

**Mr. Prue:** I mean, in my own experience as mayor, when we contracted out half the garbage in East York and the other half was privatized—one half was contracted out and other half was kept in-house—the privatized company in the first year or two actually did it cheaper. But in the long term, the public company ended

up doing it considerably cheaper and the private company walked away. Is that what you're saying is going to happen because they can't compete with the public sector?

**Mr. Hull:** Well, in that instance, I don't know under what parameters somebody came up with—

**Mr. Prue:** Well, it was because they couldn't make enough of a profit to make it worthwhile. In the end, that was the reality.

**Mr. Hull:** Again, I don't know how the comparisons were made.

**Mr. Prue:** But I'm trying to understand where you're going with this.

**Mr. Hull:** Well, where I'm going with this is I'm trying to present a fact—

**Mr. Prue:** It's to protect your business?

**Mr. Hull:** —that says we don't want municipalities to be free to go into competition with private industry.

**Mr. Prue:** Even though they might be able to do it cheaper for the ratepayers?

**Mr. Hull:** But there's nothing in here that talks about even a requirement to make sure that innovation is there; the new product's performance or end result specifications or end result requirements. There are no parameters in here at all. To me, it is a sweeping argument to say, fine, if you want to set it up—if somebody presents a reasonable argument to council, whether it's a reasonable argument or not—as I say, you have one public meeting, you comment on it and those comments may or may not be taken into consideration.

**Mr. Prue:** You've also said that rural, northern and smaller urban areas would be most hard hit. It seems to me that the opposite would be true. A city like Toronto or Ottawa or Hamilton, which has considerable financial muscle, could set up a corporation, but in a smaller town it probably wouldn't be worth it at all. They don't have the volume of business to justify setting up a—

**The Vice-Chair:** Okay, we've come to the end of the deputation.

**Mr. Prue:** Would that be correct?

**Mr. Hull:** No.

**The Vice-Chair:** Thank you very much for your deputation and have a good evening.

## REGION OF WATERLOO

**The Vice-Chair:** Next is the region of Waterloo. We have Ken Seiling, regional chair. Welcome. Make yourself comfortable. Please state your name for Hansard purposes.

**Mr. Ken Seiling:** Good evening. My name is Ken Seiling. I'm the regional chair of Waterloo, and contrary to a comment earlier, I am elected at large.

I want to thank you for the opportunity to speak to you this evening. Our points here are very brief, so you may be able to make up some time in your schedule. I'm going to try to limit it to those points.

Thank you for hearing us this evening. I want to express our broad, general support for the thrust of the



bill and where it's going. We believe this actually works toward a more mature relationship between municipalities and the province. You can read some of the details; I won't bother reading it to you; you already have the submission. But there are some areas I want to speak to specifically.

The first, and probably our most serious one and the one that is of most interest to us is the question of public transit authority. There is a legislative anomaly in the Municipal Act, 2001, with regard to the region of Waterloo's public transit authority that we believe should be corrected legislatively through Bill 130. Specifically, under the Municipal Act, 2001, all municipalities that have responsibility for public transit have the authority to employ any of the full range of higher-order or rapid transit technologies such as light rail transit except the region of Waterloo and the region of York, which took over transit six—almost seven—years ago. The Municipal Act, 2001, only permits the region of Waterloo to use buses for public transit.

How did this legislative anomaly arise? Under the old Municipal Act, RSO 1990, all municipalities in Ontario were limited to bus public transit. With the enactment of the new Municipal Act, 2001, the province modernized this authority so that all municipalities in Ontario that had authority under the old Municipal Act to operate bus public transit now had the expanded legislative authority to operate public transit utilizing any mode or technology of public transit, such as light rail transit. The region of Waterloo was expressly excluded from this legislative amendment.

Why is the public transit authority different for the region of Waterloo? The answer appears to be attributable only to the timing of the transfer of public transit to the region of Waterloo from its local municipalities, and not to any substantive policy reason. I should add that this is applicable to York region as well.

The region of Waterloo assumed responsibility for public transit under the now-repealed Regional Municipality of Waterloo Act and the now-repealed Municipal Act, RSO 1990, in January 2000. This legislation referred only to the authority to operate bus transportation systems and, accordingly, that was the extent of the authority transferred from the local municipalities to the region at that time. When the province updated and enhanced the public transit authority under the Municipal Act, 2001, by changing authority from bus public transit to the broader passenger transportation systems, the region of Waterloo was excluded from the benefit of this legislative change simply because the region of Waterloo had assumed responsibility for bus public transit from its local municipalities under the predecessor legislation. We believe it is artificial and without any substantive policy reason to exclude the region from the benefit of legislative authority to operate public transit that employs any of the full range of higher order or rapid transit technologies.

Further, there are important reasons why the region of Waterloo should have the same authority as other muni-

cipalities in Ontario that operate public transit. Currently, the region of Waterloo is undertaking an individual environmental assessment to look at a variety of modes of public transportation, such as light rail transit, in order to meet the aims and objectives of growth management strategies at both the regional and provincial levels. I should add that the province is paying 50% of that environmental assessment and the province has included within its own legislated growth plan the light rail system we're talking about right here. So it's really an anomaly that they're not giving us legislative authority to do it. It's really strange, I should say.

**1710**

In order to implement the provincial growth plan and the region's growth management strategy, the region must have the ability to evaluate and potentially implement any of the public transit technologies that prove to be most effective for the region of Waterloo. In order to do so, the region of Waterloo requests that Bill 130 include an amendment to provide it with the same authority other Ontario municipalities currently enjoy, to operate any of the full range of higher order or public transit technologies for both conventional and disabled public transit.

It has been suggested that instead of obtaining a legislative amendment, the region of Waterloo should initiate the triple majority process under the Municipal Act, 2001 in an effort to assume responsibility for all forms of public transit from municipalities. What a waste of time and what a detachment from reality. It introduces all sorts of anomalies and potential problems in that particular situation. With respect, we submit that this is a cumbersome approach that was not required of any other municipality in Ontario. Further, we submit that it would not have been the intention of the province to require the region of Waterloo to meet the aims and objectives of the provincial growth management plan without ensuring that it has the proper tools and legislative authority to achieve these objectives.

So the bottom line really is that it's incomprehensible to me and all of us why the government will not provide clean, unambiguous legislative authority when it is paying 50% of the environmental assessment for the rapid transit system, the rapid transit line is in the provincial plan, and every municipality with transit other than York and Waterloo has been given this ability

We're also suggesting that there might be a look taken at other amendments to reflect the responsibility municipalities currently have for community social housing, public health and social services. These should be reflected as spheres of jurisdiction in the Municipal Act to acknowledge the level of involvement of municipalities in providing these essential services to their citizens and to equip municipalities with the legislative authority and the tools they need to allow them to fulfill their mandated responsibilities under the Social Housing Reform Act, the Health Protection and Promotion Act, the Ontario Works Act and other provincial legislation.

A minor change should be made to the table in section 11 of the Municipal Act to clarify the current level of



responsibility of the region for the entire scope of waste management, including waste collection.

The final point is small, and it relates to the enforcement of the trees bylaw. It is a request that Bill 130 contain an amendment to the Municipal Act, 2001 to allow for the registration of rehabilitation orders on title to the subject land so that it is binding on successor owners. For those of you who have an interest in the Trees Act, particularly in the rural areas, our ability to enforce is really critical to us in doing this.

That's the end of my presentation. I said I wanted to keep it brief and tidy. If there are any questions, I'd be happy to answer them.

**The Vice-Chair:** Thank you. We have three minutes for each party. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the presentation. I just want to go quickly to the spheres of responsibility and your need to have some of them changed. Is there going to be any presentation of opposition to the committee from lower-tier municipalities that would have a disagreement with that transfer?

**Mr. Seiling:** None whatsoever. They all bought into it. They actually had transferred—they agreed to transfer the transit to the region of Waterloo. They're working with us on the environmental assessment right now. It's being built into their growth management strategy, their OPs and their local plans. There would be no problem with it at all.

The fact is, when we go to implement this, we don't want to be faced with some legislative problem that crops up in the middle of it. We want to be able to move seamlessly right through it, as every other municipality in Ontario would be able to.

**Mr. Hardeman:** From your presentation, it's kind of a housekeeping thing we should look at and say, "Why would we have it different for Waterloo when everybody else is happy with the other way, and so would the people of Waterloo?"

**Mr. Seiling:** Yes, they would, and I think the same is probably true of York as well.

**Mr. Hardeman:** The other thing, quickly—you didn't have it in your presentation at all—is the issue of more in camera meetings, but going further, the issue of having an ombudsman appointed for people who object to having more in camera meetings, who think it was inappropriately done. Have you had any discussion in Waterloo about whether we need more in camera meetings and how we would deal with the public's right to question whether they were appropriately done?

**Mr. Seiling:** We haven't had any lengthy discussion. I think one of the concerns is the timeliness of any kind of legislative requirement to review decisions, because quite frankly, if we get into a situation where decisions can be reversed—and we're doing business decisions, we're doing planning decisions, we're doing all sorts of things—if they suddenly get turned around six months or 12 months down the road, how do we carry out business in municipalities? I think that's a real issue that has to be addressed if the government is going to proceed with

appointing somebody who can open up the issue months and months after it's been decided.

**Mr. Hardeman:** So from your perspective, we would be better off leaving the definition of in camera meetings the way it presently is and no further oversight of it, rather than expand it and then have oversight that could overturn the decisions that were made?

**Mr. Seiling:** I think we need clarity on what can be discussed. I think any kind of move to review that has to be a timely measure. If you're going to have one, it has to be timely so that things move ahead, the business of government can move ahead. Beyond that, I really hadn't given it a lot of thought today. I was coming in for this; I wasn't really geared up for that. But I would say, timeliness and clarity.

One of the areas where I think there is an issue in terms of closed meetings: This government and the previous government have encouraged municipalities to do private-public partnerships, and one of the issues that comes out of our council is, what can you discuss in terms of negotiating on behalf of the municipality? A private sector company can do all their stuff in private, but how do we protect the public interest in negotiations?

**Mr. Prue:** I have a question about your other regional programs and services. AMO has said, I don't know how many times, including on this bill, that the province of Ontario should upload the download in a whole broad range of things like public health, community social housing, social services. Your position is somewhat different. You're not asking that it be uploaded, you're asking that your responsibilities and obligations and, I suppose, budget be carefully spelled out. It's quite different from AMO's position.

**Mr. Seiling:** I'm not sure it's different from AMO's position. I think AMO's position really is the cost of running the programs. Personally, I'm a firm believer that the programs are best delivered at the local level. Who pays for them and how they're paid for, that's another issue. I think the question of uploading and downloading is really a cost issue, not a who-delivers issue.

**Mr. Prue:** It's your position that you continue to deliver it, but would you agree with AMO's position in terms of the cost?

**Mr. Seiling:** I agree in part. I think sometimes in some of these programs there is legitimate cost-sharing, quite frankly, but the government usually has to pay its share, and in some cases, that share should be altered and amended.

**Mr. Prue:** In terms of the issue of closed meetings and the current regime of how meetings are closed only when it's a personnel issue, when it's a legal matter, when something is before the courts, does that cause you grief or problems in the regional municipality of Waterloo?

**Mr. Seiling:** We've always had a very tight rule on how we run our closed meetings, and members of council remind me quickly when we step outside those bounds. The one I just referred to earlier I think is an issue that has been increasingly a problem for us. We've had some



negotiations with private sector partners where we would bring the deal out publicly and openly, but the question is, how can we legitimately talk about what's the best deal for the public, when you're negotiating the deal, when there's a restriction on being able to do that? You're allowed to negotiate land sales privately but you're not allowed to negotiate lease arrangements or buyback or any of those kinds of things if you follow the act to its word.

**Mr. Prue:** Do you think that allowing that to be moved in camera will be good for Waterloo or do you see potential problems? We had the city of London here, and all the court cases that have resulted.

**Mr. Seiling:** I think there has to be some flexibility to negotiate. At the end of the day, though, the deal has to be brought out publicly and an opportunity for public input and consultation on it prior to it being passed. You just can't do it and then suddenly table it and it's done two minutes later. I think that's the protection, that you have to require that there be some public scrutiny of it.

**Mr. Duguid:** I want to put on the record the fact that not only have you come here with an excellent presentation, you've reached back to my past and found a staff member in Waterloo who happened to grow up in my neighbourhood and who I happened to go to school with.

**Mr. Seiling:** And who I forgot to introduce: Debra Arnold, who is the regional solicitor. I'm sorry.

**Mr. Duguid:** You go to no ends to make sure that you get our ear, and I commend you for that strategy. I'm sure she is doing a great job for you in Waterloo.

*Interjection.*

**Mr. Duguid:** I actually was in the same grade as her slightly older brother, Gary, who I also played hockey with. He was a heck of a lot better hockey player than I was too.

Anyway, I'm going to leave some time for Mr. Milloy. Actually, I've probably used up enough time now. I'll turn it over to Mr. Milloy. If there's any time left after that, I'll let it come back to me.

**Mr. John Milloy (Kitchener Centre):** I was hoping Mr. Duguid might comment and give his thoughts on the presentation, but thank you for the presentation.

As a resident of Waterloo region, I'm interested in going back to the changes that were made in 2001, where they changed the authority from bus public transit to the broader passenger transportation system. What happened? Were you in front of a committee back then arguing for the same thing? Why was a similar route not followed for Waterloo at the time? I guess I'm just asking, why do we keep being left out of these things?

**Ms. Debra Arnold:** Perhaps if I could answer that question?

**The Vice-Chair:** Yes.

**Ms. Arnold:** Certainly there were submissions made at that time. I'm not sure what the thinking was behind the table and essentially carving the region of Waterloo and the region of York out of the broader definition, because every other municipality in Ontario that previously

operated under the authority of bus public transit, under the old Municipal Act, enjoyed the legislative change to the broader passenger transportation system. Now, at the time of the new Municipal Act, 2001, it really wasn't on our radar screen to look at other modes of public transit, so perhaps it wasn't as strenuously submitted as it maybe should have been.

1720

**Mr. Milloy:** You said the triple majority process would be observed. What would that involve for the civilians watching?

**Mr. Seiling:** It means the public process of going back and getting each of the local councils or a certain percentage to approve every step of the way. Every time you want to make a change on the transit front, you have to go back and get a triple majority vote in the area municipalities. Now, in today's context, it probably wouldn't be a problem; it just gets in the way of doing business. As technology changes, everything else changes and we have to have a triple majority every time we want to make a change in the transit system. It doesn't make any sense. Nobody else has to do that.

**Mr. Milloy:** I'll pass it back to Mr. Duguid.

**The Vice-Chair:** You have 23 seconds.

**Mr. Duguid:** That's all I need. I just want to assure you, Mr. Chair and Mr. Chair, that we'll certainly be taking a close look at that—I think you've made a good case here—and potentially come forward with an amendment to the legislation to accommodate it.

**The Vice-Chair:** Thank you very much for your presentation this afternoon. Have a good evening.

## ONTARIO ASSOCIATION OF EMERGENCY MANAGERS

**The Vice-Chair:** Next we have the Ontario Association of Emergency Managers. Alain Normand is the president. Welcome and make yourself comfortable. Please state your name and position for Hansard before your presentation. You will have 15 minutes. Any time remaining, as you saw, is split between the three parties.

**Mr. Alain Normand:** Thank you very much. My name is Alain Normand and I'm the president of the Ontario Association of Emergency Managers. Let me first thank you for having this opportunity.

The association represents over 500 professional emergency managers working in Ontario. Although some of our members work at the provincial and federal levels or in non-profit organizations for industry, the majority of our members actually work in municipalities.

The primary role of the emergency manager is to ensure that citizens, businesses and stakeholders are protected to the best of our ability during an emergency. With the increase in number, intensity, and range of impact of emergencies in Ontario that we have seen over the last decade, the work has become more and more complex. Our members are the ones on the front line of emergencies on a daily basis and they understand very



well what is at stake when an emergency strikes our communities.

Recently, we presented our concerns to this government during the debates on Bill 56, An Act to amend the Emergency Management Act. Our concerns did not see themselves translated in legislation. Since the concerns relate primarily to the role of municipalities during emergencies, we would like to take this opportunity to review various acts in relation to municipalities by this committee to bring our concerns to the forefront again.

The Emergency Management and Civil Protection Act of Ontario provides the ability for the head of council of a municipality to declare an emergency and to issue orders as required. However, there is no provision in this legislation for enforcement of these orders at this time.

With the introduction of changes to the Emergency Management and Civil Protection Act, the province has ensured that it had the full power to enforce orders issued under a provincial declaration of emergency. We contend that the responsibility for managing an emergency through all its phases lies inherently with municipalities. As such, municipalities need the appropriate tool to fulfil that responsibility. In order to ensure the safety and well-being of our citizens and community, the province must confer to municipalities the ability to issue orders and enforce them. In particular, the ability of municipalities to enact orders around restricting travel, evacuation, closure of facilities in the impacted area and procurement of goods, services and resources is integral to ensure a rapid, effective and efficient response.

Municipalities do not have the luxury of time to wait for orders to be issued by the province when lives are at stake. We are therefore submitting a number of articles, which we've annexed to my presentation, that should be introduced through Bill 130 to ensure the provision of such powers.

The first proposed article will see powers attributed to municipal first responders during emergencies prior to any formal declaration of emergency by a head of council, in the same way that the Commissioner of Emergency Management in Ontario can issue orders during a provincial emergency prior to having the Lieutenant Governor declare a provincial emergency.

It specifies the types of actions that can be undertaken under such circumstances, the authority conferred to the incident commander, along with statements indicating that it is an offence to refuse to comply with such an order issued under these circumstances and protection from liability for anyone issuing such orders. The next article will serve to provide the necessary power to the head of council during a declared emergency, with the same enforcement ability and the same protection from liability.

Although these provisions may already be implicit in the existing legislation, what is lacking is the recognition that a refusal to comply is an offence. We also propose that there should be penalties attached to such offences in order to provide real ability for action by the municipality.

Other clauses are included to extend the protection from liability to any municipality that may assist another during an emergency, to ensure that municipal emergency orders do not contravene the Occupational Health and Safety Act and send people into unsafe conditions, and to ensure that no bylaw is required to take action when time is of the essence.

As a representative for a force of over 500 emergency management professionals in the province, I offer my support and that of the Ontario Association of Emergency Managers to help in rewriting any parts of this legislation and to consult with this government in any way possible to make Ontario safer and better prepared. I want to thank you for providing us this opportunity on behalf of the association.

**The Vice-Chair:** Thank you very much. We have about three and a half minutes each. We now move to Mr. Duguid.

**Mr. Duguid:** The motions that you've put forward look familiar. Are they the same motions that you—because I know you must have appeared before committee on Bill 56—

**Mr. Normand:** We did.

**Mr. Duguid:** —the Emergency Management Statute Law Amendment Act. It was probably the justice committee.

**Mr. Normand:** That's right, the standing committee on justice.

**Mr. Duguid:** Yes, the standing committee on justice policy. Are these the same motions that you put forward for that legislation?

**Mr. Normand:** Very similar. There are a few motions that we've kept for later related to payments and some that we've put aside that were relevant to Bill 56 that may not be quite relevant at this point. We wanted to put the emphasis on the ones that were most important at this occasion. But yes, what we're presenting here is basically a repeat of what we had presented.

**Mr. Duguid:** So the appropriate way to have dealt with your amendments would have been during that original Bill 56, I would assume, had they had support. I'm not familiar with the rationale behind the reasons why your amendments were or were not accepted by the committee. Perhaps you could—

**Mr. Normand:** I'm not sure why they weren't accepted at the time. I did give a few examples of some of the situations that our emergency responders are faced with, which need to be addressed. For example, in an evacuation we give an evacuation order, but if people refuse to comply with the evacuation order, they will remain on location, they'll remain in the dangerous area, and we have no way of removing them from there. When they finally are in real danger, then we have to send our emergency responders to bring them out, putting the emergency responders at risk. This is one of the major examples we have for which we need to have the power to enforce any kind of orders that are given at the municipal level. We're coming at this point because we're talking about giving powers to our municipalities



to take action in various situations. To us, emergency management is one of the most important ones.

**Mr. Duguid:** I thank you for that. I guess I would ask, have you had any further discussions with the Minister of Community Safety or with staff on the emergency—

**Mr. Normand:** We've had some discussions with some of the staff. There's been quite a change in seats at Emergency Management Ontario, as you're probably aware. We're in a bit of a transition mode right now, so we're waiting for the new administration to be there to bring it up again. Certainly, we would like to have this considered by this committee as well.

**The Vice-Chair:** My apologies, Mr. Prue. You were to start this rotation. I'll turn it over to you now.

**Mr. Prue:** Along the same lines: Your association attempted to pass these regulations and get the ear of the government on Bill 56 but failed, and that's why you're bringing them back to this bill. Do you think that this bill is the right bill, the right course of action? Obviously, the other one was right on point. This one here deals with a whole bunch of municipal items—not so much this, but lots of other things.

**Mr. Normand:** I agree that it is maybe not directly related. However, the fact is that here we're trying to change acts that affect municipalities, we're trying to make changes in provisions for municipalities to take action, and we felt this was the time to raise it again, since we weren't successful at our first attempt.

1730

**Mr. Prue:** In terms of municipalities, I have not heard that municipalities have asked directly for the kinds of authorities that you've got here. Certainly, I know Peterborough, with the flood and the rainstorm, was able to cope; the Mississauga derailment of many years ago, they were able to cope. Whenever there's a natural disaster—the ice storm in Kingston, they were able to cope. Why is it that you believe they need more authority than they've obviously been able to rely upon in past years?

**Mr. Normand:** I think the reason why it's not being pushed is because we have been lucky, maybe I should say, that we have not had any casualties from these emergencies, for our emergency responders. However, we have had a lot of close calls, situations when some of our emergency responders' safety was put at risk in trying to respond; some of them, also, that we maybe don't hear about as much because they're not as taken up by the media. But there are regularly situations in northern Ontario where there are forest fires where people want to stay in their homes to try to protect their homes as long as they can, and finally we have to go in and rescue these people, take them out once they're inundated by the smoke, and we're putting our own firefighters at risk by doing this. Those are some of the examples.

The municipalities themselves may not have taken it up at this point because, again, they've been busy with other aspects of the legislation. Municipalities were supportive of the work that we did when we went to Bill 56. We had a lot of support at that time. Unfortunately, this is

not their main priority—we recognize that at this point—because the bill addresses other topics.

**The Vice-Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the presentation. I guess just to show how much times change, when I was first involved in municipal politics, they said that the only difference between the head of council and the rest of council was that the head of council had the authority to call out the posse. The act has changed considerably since.

I just want to go to the part of your presentation that's an appendix, which is the recommendations of the things you would like added to the Municipal Act. The powers during an emergency—and I just look at them quickly here: "Command the assistance of persons present and any inhabitant of the municipality; remove property from buildings at risk; take charge of property; enter, break into or tear down any building; exclude and remove persons and vehicles from the building or vicinity; and generally do all things necessary to respond to the emergency."

Is it your presentation that in fact those powers do not presently exist in the Municipal Act?

**Mr. Normand:** In the Municipal Act, no. But in the Emergency Management Act they are implied but not detailed. The head of council has the authority to take any action required as long as it's not contrary to law. That's what the exact text says. However, what we're saying is that, first, it's not very detailed. We're giving a little bit more detail. Secondly, once the order is given, there's no power to enforce it. What we are concerned with mainly is the power of enforcement, to be able to do this without having people refuse it. Right now, if a police officer wants to enter a property, he needs a warrant, he needs all sorts of documentation to be able to enter any property. We are saying that under emergency declaration conditions, police officers can go into a situation to take control of an emergency in different ways. So these need to be spelled out. People can block access right now for police, fire and ambulance and they have the right to do it because there is no enforcement power for this.

**Mr. Hardeman:** Are there any cases or documentation to show, where someone tried to use these implied powers presently, that anyone would go to court and win based on their rights being infringed upon after the fact?

**Mr. Normand:** I'm not familiar at this point if there are. We have had people refuse to comply and remain in situations where they have put themselves and emergency responders at risk. We can document some of that.

**Mr. Hardeman:** Regarding the offence and penalty part of the act, my question is: If you look at the things you need to do on the front lines of the emergency, what is the advantage to having penalties after the fact?

**Mr. Normand:** It's mainly that if people know they are going to be charged—if the police say you can be fined, you can be jailed—the police have that power to bring people out of an emergency situation.



**Mr. Hardeman:** I was in the fire service for 25 years, and we often talked about having to knock down the building next door and the owner of that building not necessarily supporting that. That person's knowing there was a penalty of a fine after the fact would not make much difference. The building would still get knocked down. To me, it seems kind of redundant to have penalties for things that would only be requested in an emergency. After the emergency, we'd be better off spending our time trying to rebuild what was destroyed rather than trying to penalize those who didn't help.

**Mr. Normand:** Certainly in different situations, I agree that you have to look at different scenarios. Maybe that's not the most appropriate one, but there are situations when we feel that this is—

**The Vice-Chair:** Thank you for your presentation.

#### ONTARIO ROAD BUILDERS' ASSOCIATION

**The Vice-Chair:** We will move on to Rob Bradford, executive director of the Ontario Road Builders' Association. Please state your name for Hansard. You have 15 minutes. Any time remaining will be divided among the three parties.

**Mr. Rob Bradford:** Thanks for the opportunity. I'm Rob Bradford, executive director of the Ontario Road Builders' Association.

You heard a little bit about what I want to talk to you about from Mr. Hull earlier. I hope that maybe I can bring a little more clarity to the issue. I'm going to skip over a lot of the rhetoric in our brief and maybe get right to some of the points.

We are very concerned that amendments to the Municipal Act and regulations that are to follow immediately, as we've been told, will give municipalities the ability to compete against private corporations for the provision of virtually unlimited goods and services. I think the important thing to recognize there is that we believe they're going to be given the ability to compete unfairly with the private sector, and maybe that gets to some of the questions that came up earlier.

We absolutely believe the private sector can compete every time with the public sector on an equal playing field. We think that the regulation, in many ways, unlevels that playing field. Municipal corporations would be able to borrow employees from municipalities. They'd be able to borrow monies on the strength of the taxpayers' guarantee. They could transfer land, equipment and other assets to the municipal business corporation without, necessarily, a recognition that this is a cost of doing business. Municipal corporations would be able to share costs with municipalities that would, we believe, further allow them to show a misleading competitive advantage compared to the private sector. They'd have unlimited accounting and reporting leeway to facilitate an apparent, if not necessarily accurate, comparison of value for taxpayer dollars vis-à-vis the provision of services by the private sector. Municipalities could even purchase or

enter into partnerships with private sector contractors or other service providers. You could buy 49% of a company.

Let's play it through a potential scenario. You buy a local contractor—maybe you pay higher than market price for it, because you can. You proceed to lock up all the work in the local area, because you no longer have to public tender—a huge, huge issue here is that private corporations could do this work without public tender. To us, that's one of the only ways you find out whether you're getting value for money. Essentially, we believe that with all the advantages that would be built up, that corporation, that partnership, could now lock up all the work. When the work was locked up, if the municipality chose to sell its interest in the company, you'd be left with a private contractor that had a monopoly on the local area. So whether a municipality had a monopoly in the local area of work or, eventually, a private sector contractor, it's still wrong. It still leads to an unfair advantage, leading to a monopoly on work in the local area.

Municipalities would also, for the first time, have the right to sell their services to other municipalities. Again, we find that very, very problematic.

1740

We dealt with this issue three years ago when it first came to us. The government, in its wisdom at the time, understood what we were saying, particularly in the areas of roads, highways and bridges, and we did receive an exemption at that time. We're certainly looking for that same exemption again as we go down the road, and we'd certainly urge you to give the same consideration to other private sector businesses that we'll be talking to along the same lines—waste management came up earlier. I think even in the waste management business, if a public corporation or a public entity has to show its true costs of doing business—which never, ever happens; let me guarantee you that—the private corporation will be collecting your waste. In areas where we have public entities collecting waste, doing construction work, any of that kind of thing, I don't believe in any of those cases the public has ever seen the true cost of doing business.

Municipalities carry liability insurance. It costs a fortune. A corporation can't operate under that liability insurance. Who's paying for that? The taxpayer is paying for it, but the corporation is going to be able to not have to show it as a cost. It's the same as if you borrow employees. I've given you a list of some of the things we see as an unfair advantage. We believe there's less public accountability in this than there's ever been before, because we don't believe there is a method or a way the public will ever be able to correctly determine whether or not that private corporation is competing properly, fairly and equitably, and whether or not it is delivering proper services to the taxpayers.

I think I'm going to leave it at that. The rest of our arguments are in the brief. I've attached a copy of what we submitted three years ago. The arguments haven't changed. The government keeps asking us why we are worried. Do we think municipalities are going to go out



and build corporations to build roads? Yes, we do believe they will do that. Once they have the ability to do that, there are many engineering departments in smaller municipalities in this province that would just love to consolidate their internal power, if you will, by setting up corporations and locking out the private sector. Yes, we believe it absolutely would happen. We have municipalities now building bridges, if you can believe it. They probably shouldn't be doing that, but we don't want to see that thing escalating so that we have municipal corporations building all of the province's bridges. It's just not good public policy and it seems to fly in the face of where we're going in the world. We're going to privatization, outsourcing. This drives work back to the public sector. If I were Machiavellian about it, I'd also suggest to you that it's driving work from the construction unions into the public service unions; not that that's anybody's intent, but that will be a direct result of some of the things we see happening.

**The Vice-Chair:** Thank you very much. We have a little over three minutes for each party. We'll start with Mr. Prue.

**Mr. Prue:** I'm starting this one?

**The Vice-Chair:** Yes. You're starting because I neglected you in the last one.

**Mr. Prue:** Okay. You're not making a mistake this time?

**The Vice-Chair:** No, I'm not; no. We're back to you.

**Mr. Prue:** Sir, the first place that experimented with allowing municipalities to tender for projects was Indianapolis in the United States. They found it hugely successful. It saved the corporation of that city millions, maybe billions of dollars over the years. It seems to me that's what's being emulated here. Do you have any information about the American Republican experience to save money? What you're saying flies—

**Mr. Bradford:** I have no experience with Indianapolis, but it doesn't fly in the face of common knowledge. I can pull studies out of the sky and deliver them to this committee showing that when you properly assess costs to public corporations, very seldom do they compete with private operations.

**Mr. Prue:** And why is that? It seems to me they don't have to make a profit.

**Mr. Bradford:** Why is that? That's a discussion for a different day. We obviously disagree, Mr. Prue.

**Mr. Prue:** No, no. You start from the premise that any good corporation has to make 10%, 12% profit in order to satisfy the shareholders. If the city can do it for 10% or 12% less and break even, you wouldn't think that was a good thing for taxpayers?

**Mr. Bradford:** If that were possible, I think that would be a good thing for taxpayers. There's not a construction company in the world that operates on margins anywhere near 10% or 12%. Dun and Bradstreet says it's 2.5%. I think it's a little more than that, but I don't believe that 10% or whatever the number is can be made up. The private sector far exceeds that in terms of efficiency and ability to do the work quicker and better.

**Mr. Prue:** And you're saying a public corporation run by a municipality couldn't do that?

**Mr. Bradford:** Not as efficiently or as effectively, no.

**Mr. Prue:** And why is that? If they had the same staff, if they hired someone to manage from the private sector, why couldn't they?

**Mr. Bradford:** Do you want to get into the culture of government? That's my answer, Mr. Prue. Government tends not to operate as efficiently as the private sector.

**Mr. Prue:** And the private sector tends to make profit a lot more than the government?

**Mr. Bradford:** Agreed. Is that a dirty word?

**Mr. Prue:** No, but is private—

**Mr. Bradford:** Are we looking at a day where we're going to bring all of our private work back into the public sector again? Is that where we're going in this province?

**Mr. Prue:** No. I've only had one experience when I was the mayor, and we privatized half. In the end, the private sector could not compete with the public sector.

**Mr. Bradford:** I don't believe that's true.

**Mr. Prue:** What evidence do you have that that's not true?

**Mr. Bradford:** I don't believe they had an honest benchmark to compete against.

**Mr. Prue:** They didn't even bother to compete at the end of the five years.

**Mr. Bradford:** Which says to me the playing field was made so unfair they didn't even bother.

**Mr. Prue:** You have all the answers. Thank you very much, Mr. Chair.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** I don't want to get into—

*Interjection.*

**Mr. Bradford:** Well, we disagree.

**The Chair:** Mr. Duguid has the floor.

**Mr. Duguid:** My turn now. I don't want to get into a philosophical discussion with you on this stuff. I'm probably a little closer to your view than Mr. Prue is in that I think you need a good balance of service delivery mechanisms. I've been involved in local government where we've had opportunities to form corporations for private purposes, and it has been entirely in the public interest to do so. To me, our role as elected representatives at all levels of government has to adhere to what's in the public interest above all. I'm not sure where you can draw the line on this stuff and exempt one particular industry or another particular industry.

Certainly we wouldn't want to prohibit municipalities from being able to benefit from the freedom that comes with being able to set up these corporations. In the city of Toronto, the Toronto Community Housing Corp. is one of the best examples in North America of a housing provider that probably wouldn't have been as successful if set up under any other structure. Economic development corporations exist throughout.

So I'm trying to come to terms with exactly what you're trying to say here. Are there examples of cities that have gotten into the road building business and competed successfully with the private sector?



**Mr. Bradford:** I don't believe there are. Many municipalities do some degree of their own road work—emergency repair and stuff like that. In situations like that, it certainly does make sense to do it that way. I'm not aware of any municipalities that have established corporations to get into the road building business, but then I don't believe they've had the wherewithal to do that in the past.

**Mr. Duguid:** See, I have confidence that municipalities will make decisions that are in the best interests of their constituents, but at the same time, I'm not convinced that any level of government would do a better job of building roads than our private sector does. To be honest with you, I'd be very surprised if you saw competition coming from a municipal government wanting to get into private corporate business. I think they have enough challenges managing what they have now, to be frank.

**Mr. Bradford:** I would like to believe that's the case. If that's the case, then it probably wouldn't bother any municipality if we maintained the exemption.

**Mr. Duguid:** I think what we want to do, though, is open it up to give the municipalities the flexibility they need—

**Mr. Bradford:** And I agree with you, yes, there certainly are areas where municipalities can serve their taxpayers by entering into—hydro is one area. There are areas where they can do the job as well or better. I'm basically referring here to hard-core infrastructure services like construction, and I would include waste management. In those areas, I do stand behind my original statements. But yes, I don't suggest that municipalities can't find areas where they can operate in the best interests—

**The Vice-Chair:** Thank you. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. First of all, could you tell me where you would draw the line in municipalities that provide road maintenance and road building on their own? When you turn that into a corporation, where does the problem arise, in your opinion? Obviously, every municipality, particularly in rural Ontario, has a roads department where they have their equipment and they can build their own roads. So where does the problem area start?

1750

**Mr. Bradford:** First of all, there's no public tender. That's the problem right there. You don't know how these deals get made. If there is a public tender, a contractor is bidding against an entity that doesn't necessarily have to carry the same real costs as a contractor, and therefore can come in every time with a lower bid. Whether or not that is a real bid and whether or not that's really what it's costing the taxpayer to get their work done is unknown. That's part of our problem here: There's no mechanism to lay it bare. So if we're going to go this way—if we have to go this way—let's at least look at requiring some mechanism to show that a municipal corporation is accounting for its true costs in its bids. And if they're doing that and they're low, then the taxpayer is getting a good deal.

**Mr. Hardeman:** Again, true cost: I think one of the things we are missing in our discussion here is that if it's a municipal corporation, they don't have to pay property tax or business tax within the community, so that reduces the cost. But it really doesn't reduce the cost to the municipality, because if they don't get it from the provider, then obviously it's going to increase the need for others to pay.

If the government decides they are going to allow the corporate structure in municipalities, what would be your suggestion as to what needs to be done to make that full-cost accounting? What type of thing do you think we should do to make it full-cost accounting so that it is a fair and equitable bidding process?

**Mr. Bradford:** I suppose if you went with commonly accepted standard form construction documents, and those documents became public knowledge after a tender process and were open for scrutiny to the public, we could certainly look at those documents and determine whether or not there was reasonably fair costing.

**Mr. Hardeman:** So the corporation is not the bad thing. It's the secrecy or—

**Mr. Bradford:** The ability to compete with advantage, yes. We'd love to not have to think that we've got to compete with the public sector, but if that's in the cards, we'd like to see transparent and fair competition.

**The Vice-Chair:** Thank you very much for your deputation this afternoon. That brings your time to an end.

## COUNCIL OF OXFORD COUNTY

**The Vice-Chair:** Next we will have the council of Oxford county. We have Donald Woolcott, the warden, and Ken Whiteford, the chief administrative officer and clerk. Welcome.

**Mr. Hardeman:** I'd just like to say that this time the clerk did save the best for last.

**The Vice-Chair:** Thank you.

Make yourself comfortable there. Please state your name and position before any deputation or speaking point.

**Mr. Donald Woolcott:** I'm Donald Woolcott, warden of Oxford county. Thank you very much to the committee for hearing us today. We do have a written submission that we have given to you. We're not going to go through it verbatim, obviously, but we would like to bring up a couple of the issues we have highlighted in our review of the Municipal Act.

The nature of our problem in Oxford county is that we do have a 10-member council. We represent more than 100,000 people. We certainly believe that a 10-member council is a very effective council for the manner in which we conduct our business. The difficulty is that of the eight municipalities, seven of them have only one member sitting in that council chamber, and if there is an absence of that member for any reason, that municipality is left without a voice.



The proposed act leaves us with a situation where we cannot have a replacement member appear at county council for three months. Our members of council feel that that is unfair, that it deprives them of representation, and they ask that a change be made to allow an alternate to be applied from the lower-tier municipality, under a procedural bylaw between both the lower-tier and the upper-tier council, to sit as their representative at that council chair. We certainly recognize the opportunity for participation by a member through electronic means, which is a proposal that has been bandied about, and we recognize that this is a possibility that could answer some of the problem. But we still feel the committee should consider our change. Perhaps the solution that is given, and some of the wording and whatnot, could be worked on much better.

I'll move on to some of the other areas that we did recognize. Waste management has come up several times here today and we recognize that waste collection is referred to. Bill 130 does not define the terms. There was a definition in some of the earlier iterations of the Municipal Act.

Furthermore, we need a definition of what exactly is recycling. I realize that a definition of recycling is somewhat fleeting. The term "recycling" is ever-changing and evolving, so I think we need to be aware of that in anything. Waste management also is an evolving term, but we're at a point now where we're looking to establish some certainty in relationships between our municipalities, and a definition would certainly assist us in that.

Economic development: The table in section 11 of Bill 130 indicates that it would be carried out exclusively by the county of Oxford, as it has been for a number of years. We have operated by passing bylaws, enabling lower-tier municipalities to carry out that function for us in a very capable and admirable manner. The three urban centres have undertaken that and just recently one of our rural townships asked for that ability as well.

The example of economic development in Oxford county would be in 2005 when we were asked to assemble land for a major economic project. It was the county of Oxford that was the assembler of that land, not the municipality, and the reason for that being that the land was in a rural township that did not have an economic development agreement with the county. We fulfilled all the terms and requirements of that economic opportunity and we now have an investment of some \$1.1 billion to \$1.5 billion coming to Ontario.

Again, back to waste management, not only do we need a definition, we became directly involved as a county in waste collection in 2002 after a successful triple majority vote of all our lower-tier municipalities. At that time, we recognized what was an area-wide—not just local—situation of waste management, something that could be managed effectively across the whole area.

We did this through contracts. We have both private sector and public contracts, with the city of Woodstock and the township of South-West Oxford providing services. It provides us with a very good comparative nature

of what the costs of waste recycling are in Oxford county.

The other items—spheres of influence, again. When the County of Oxford Act was established in 1975, we were given exclusive jurisdiction of water and waste water. It is not a jurisdiction that we exercised until late 1999. We started doing some of the work; we were doing all the groundwater work. We had PUCs that were coming under significant pressure to operate their systems. At that time, we amalgamated and, again, assumed all the responsibility for the water and waste water and water purveyance. It has been a very effective program. We see that this is certainly very much in line with what is coming down under the Clean Water Act and natural resources protection acts and the conservation acts. So we see requesting a continuance of that as being proactive to what the aims of the province of Ontario are.

We have raised these matters and hopefully I've left an opportunity for members to question. I hope you will give us consideration. If there are any questions or further comments that the committee wishes to make, we are certainly available at any time.

**The Vice-Chair:** Thank you very much. We have just a little over three minutes for each party. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much, Mr. Warden, for the presentation. First of all, I want to deal with an item that's not in your presentation. It has to do with one of the items that's had considerable discussion in our committee, which is the need for more in camera meetings in council. Obviously, being a member of both the local and the regional council, I guess it's fair to ask, have you had a lot of your people thinking that the present structure does not allow sufficient discussion in camera, that they need more in camera meetings?

**Mr. Woolcott:** I would say, from a local-tier, lower-tier municipality in the township of Blandford-Blenheim, no, there has not been a great request for any extension of that definition. We sometimes struggle at the lower tier with what exactly is the definition in cases, and the term that most comes to light is "potential litigation." It's very clear, on other points, what the issues are. At the upper tier, at the county of Oxford, again there's not a lot of demand for further closed sessions. We have members of council who wish for fewer closed sessions. Again, the problematic issue is the term "potential litigation," and sometimes it's extremely difficult to identify what that is.

1800

**Mr. Hardeman:** The devolution of some of the responsibilities from the original 1974 act: In your presentation, is the recommendation from county council consistent with the general wishes of the local-tier municipalities? I asked that of Waterloo, and they said that nobody in Waterloo would object to any of the recommended changes. Would that be true in Oxford, or is there some concern about some of the areas?

**Mr. Woolcott:** I believe there would probably be some concern from some of the areas, but it's very difficult to know. I would like the committee to realize that we are appearing on what effectively are notices of



motions that were introduced by members of county council. They were very sparsely debated, and there was no staff input to them. Those motions, for the most part, have been returned to the lower-tier municipalities for comment, and those comments have not all been returned.

On the issue of water and waste water, though, I believe that six of the eight municipalities have replied very clearly that they enjoy the status quo.

**Mr. Hardeman:** Thank you very much for your presentation. We hope the government will look favourably on some of your suggestions as to what could be changed for the county to make it work a little better.

**The Vice-Chair:** Mr. Prue.

**Mr. Prue:** I've just had a chance to read the whole brief here. It seems to me that all you're looking for, in terms of alternate, is to adopt what the county of Bruce had in its legislation in 1999 and which I imagine has not been amended in this act. Would that be it?

**Mr. Ken Whiteford:** That would be correct.

**The Vice-Chair:** State your name, please.

**Mr. Whiteford:** Ken Whiteford.

The county of Bruce change was through a restructuring order issued by the ministry. I have had discussions with the county. They have not had any change to that over the years since it was put into effect.

**Mr. Prue:** It seems to me that what you're proposing here makes eminently more sense than what the government has in its bill, which is to allow people who are not at the meeting to vote. Do you have any thoughts on that? I've given the example of somebody sitting on a beach in Acapulco with a drink in one hand and a telephone in the other, participating in a vote. That's the alternative here. Would you prefer to appoint someone, as Bruce has, to actually attend the meeting and vote in someone's stead, or do you like the idea of allowing someone who's not there to vote from wherever?

**Mr. Woolcott:** I'm very much a face-to-face person. I would strongly object to electronic participation in a closed session.

**Mr. Prue:** I congratulate you for that. You're the first person who has actually made a statement that strongly. This would be the only level of government that would allow that. Certainly I can't send someone to my seat upstairs, nor can they do it in the House of Commons.

The second question I have is about in camera meetings. You haven't dealt with that—Mr. Hardeman asked the question. Do you believe there should be more in camera meetings, or are you content with the way they are? Do you think it causes the municipality or the county council any difficulty having to hold its meetings in public?

**Mr. Woolcott:** I don't believe we've encountered any particular difficulties in doing so in public. We've always tried to be forthright with people. We do, though, take sensitive issues, whether they are personnel, financial or litigation, as very serious issues that we wish to keep in camera and wish to protect the rights of the municipality, and ultimately of the taxpayer, from undue exposure.

**Mr. Prue:** So the law as it exists—because that's what the law now says—is fine?

**Mr. Woolcott:** Yes, we've been able to work with it.

**Mr. Prue:** Thank you very much.

**The Vice-Chair:** Mr. Duguid.

**Mr. Duguid:** Thank you very much for the deputation and for taking the time. I guess it was at the last AMO conference that we had an opportunity to talk about some of these issues, and I appreciate that very much.

**Mr. Woolcott:** Yes, we did, Mr. Duguid.

**Mr. Duguid:** Getting back to the closed meetings aspect, do you support AMO's contention that there are circumstances not allowed under the current legislation, such as the need sometimes to brief members on complex items, the need to engage in strategic planning or strategic discussions, for instance, about an issue with another level of government, a strategic issue with another order of government within the municipal sector or a strategic issue with a private company or something like that, which may not be land-related and may not be grounds to go in camera? AMO has been very concerned that they're having to engage in this in an almost a nefarious way and it's almost that these discussions have to take place in a coffee shop off-line—all that stuff—and it's not the way it's supposed to happen.

**Mr. Woolcott:** I think one of the things to consider when looking at Oxford county is that we operate, in my view, very much an executive level of government. I'm a full-time warden. I am in the office every day. I am able to consult with staff any day I'm there. That also gives me the ability to consult with my council on a one-to-one basis, and perhaps outside what one would consider the outside extremes of a meeting area. So, number one, to put it in the perspective of some issues we've had to deal with, we've been able to do it in that manner rather than bringing council together as a whole to discuss strategic planning. Number two, we have done our strategic planning in the open. We have met in the open and invited the public to participate in our strategic planning.

**Mr. Duguid:** How could a city the size of Toronto or Ottawa consult with each and every one of its councillors?

**Mr. Woolcott:** We're 100,000 people; we're not a million.

**Mr. Duguid:** I can understand how you could do it in a smaller council, but on a larger council it would be pretty difficult to consult with each and every member on those kinds of issues. But I recognize your thoughts on it and appreciate them. We'll certainly take a look at your submission and see if there's anything we can do.

**Mr. Woolcott:** I appreciate that, Mr. Duguid.

**The Vice-Chair:** Thank you very much for your deputation. Have a good evening.

To the committee members, this brings us to the end of our deputations today. I'd like to thank all witnesses, members and committee staff for your participation in the hearings. This committee stands adjourned until 4 p.m. on Wednesday, November 22.

*The committee adjourned at 1807.*





## CONTENTS

Monday 20 November 2006

<b>Municipal Statute Law Amendment Act, 2006, Bill 130, Mr. Gerretsen / Loi de 2006 modifiant des lois concernant les municipalités, projet de loi 130, M. Gerretsen .....</b>	<b>G-889</b>
Ms. Sheila Jacobson .....	G-889
City of London .....	G-891
Mr. Grant Hopcroft .....	
City of Brampton .....	G-894
Ms. Susan Fennell .....	
Ready Mixed Concrete Association of Ontario .....	G-896
Mr. John Hull .....	
Region of Waterloo .....	G-898
Mr. Ken Seiling .....	
Ms. Debra Arnold .....	
Ontario Association of Emergency Managers .....	G-901
Mr. Alain Normand .....	
Ontario Road Builders' Association .....	G-904
Mr. Rob Bradford .....	
Council of Oxford County .....	G-906
Mr. Donald Woolcott .....	
Mr. Ken Whiteford .....	

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### Chair / Présidente

Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)

#### Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)  
Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)  
    Mr. Kevin Daniel Flynn (Oakville L)  
Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)  
    Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell L)  
        Mr. Jerry J. Ouellette (Oshawa PC)  
        Mr. Lou Rinaldi (Northumberland L)  
    Mr. Peter Tabuns (Toronto–Danforth ND)  
Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### Substitutions / Membres remplaçants

    Mr. Ernie Hardeman (Oxford PC)  
Mr. John Milloy (Kitchener Centre / Kitchener-Centre L)  
Mr. Michael Prue (Beaches–East York / Beaches–York-Est ND)  
    Mr. Mario G. Racco (Thornhill L)  
    Ms. Monique M. Smith (Nipissing L)

#### Clerk / Greffière

Ms. Susan Sourial

#### Staff / Personnel

Mr. Jerry Richmond, research officer, Research and Information Services

16  
23

GOW...  
Publications

G-38



G-38

ISSN 1180-5218

**Legislative Assembly  
of Ontario**

Second Session, 38<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**

Deuxième session, 38<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

Wednesday 22 November 2006

**Journal  
des débats  
(Hansard)**

Mercredi 22 novembre 2006

**Standing committee on  
general government**

Municipal Statute Law  
Amendment Act, 2006

**Comité permanent des  
affaires gouvernementales**

Loi de 2006 modifiant des lois  
concernant les municipalités

Chair: Linda Jeffrey  
Clerk: Susan Sourial

Présidente : Linda Jeffrey  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 22 November 2006

Mercredi 22 novembre 2006

The committee met at 1600 in room 151.

MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT DES LOIS  
CONCERNANT LES MUNICIPALITÉS

Consideration of Bill 130, An Act to amend various Acts in relation to municipalities / Projet de loi 130, Loi modifiant diverses lois en ce qui concerne les municipalités.

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The standing committee on general government is called to order. We're here today to continue public hearings on Bill 130, An Act to amend various Acts in relation to municipalities.

I'd like to welcome all of our witnesses and remind them that they will have 15 minutes.

ONTARIO WASTE MANAGEMENT  
ASSOCIATION

**The Chair:** Our first delegation today is the Ontario Waste Management Association: Mr. Fisher and Mr. Cook. Welcome. Please make yourself comfortable. If you'd like to pour yourself a glass of water and get yourself settled. When you do get yourself settled, you'll have 15 minutes. Please say your name for Hansard, and the organization you speak for. Once you've started speaking, you'll have 15 minutes. If you leave time at the end, there will be an opportunity for us to ask questions or make comments on your delegation.

**Mr. Rob Cook:** Thank you, Madam Chair and committee members. My name is Rob Cook and I'm the president of the Ontario Waste Management Association. With me today is John Fisher, who is vice-president and general manager of Walker Environmental Services, based in Thorold, Ontario. John is also the chairman of the board of the Ontario Waste Management Association.

I'd like to thank the committee for providing us with the opportunity to appear before you today to talk about our concerns with the fundamental principles contained in Bill 130 relative to waste management and municipal business corporations.

The Ontario Waste Management Association represents the private sector waste management industry in Ontario that invests in and manages the province's waste

management system, a system that all of us in this room have come to rely on as an essential service.

Private sector waste management companies directly manage over 95% of the waste and recyclables that are generated by Ontario's industrial, commercial and institutional sector annually and directly manage under contract to municipalities over 80% of the residential waste and recyclables generated annually by Ontario residents.

Ontario business, industry and residents have been well served by a historical separation of responsibility for the delivery of waste management services. Municipalities provide for residential waste services supported by municipal taxes, and the private sector provides waste services directly to the industrial, commercial and institutional sector on a business-to-business basis.

In 2003, our association objected to the introduction of broad powers to municipalities under the Municipal Act that facilitated the establishment of municipal business corporations. Our objections were based on the potential expansion of municipal responsibilities for waste management into the non-residential sector and the potential for the public sector to use municipal business corporations to unfairly compete with the private sector.

At that time, during the development of the municipal business corporation regulation number 168, it was recognized that the regulation should permit municipal business corporations to be established to provide services related to residential waste only. This provided for the use of municipal business corporations as a potential alternate service delivery vehicle for existing services, while not providing municipalities with the ability to expand business opportunities at the expense of the private sector. This restriction recognized the distinction between residential waste management, as a municipal responsibility, and ICI—industrial, commercial and institutional—waste management, which is the responsibility of the private sector.

On November 6, 2006, OWMA was informed of the government's plans to change the existing municipal business corporations regulation. The proposed changes to the regulation will be facilitated by the amendments to the act in Bill 130 and will reintroduce all of the concerns previously raised by the private sector. Specifically, municipal regulatory authority and service delivery through municipal business corporations will extend to the management of waste in the industrial, commercial and institutional sector.



We have been advised that when Bill 130 is approved, the new MBC regulation will follow immediately, with little or no consultation with the private sector.

OWMA believes that the proposed regulation changes do not adequately address fundamental competitive issues between municipal business corporations and the numerous private sector corporations providing waste management services.

The regulation changes fail to recognize the complexity of the relationship between the existing private sector industry and the public sector and the need for special consideration in areas such as the valuation of municipal waste management assets that are transferred to municipal business corporations, ongoing financial support to waste management municipal business corporations by municipalities, and the potential exclusivity that can be achieved by municipal business corporations with or without a private sector partner through the awarding of contracts without a competitive process.

We believe that the expansion of municipal authorities and the inclusion of ICI waste management in the municipal business corporation regulation without further and adequate consultation will set municipalities on a collision course with the private sector waste management industry and will erode existing provincial regulatory authority over industrial, commercial and institutional waste.

OWMA cannot agree with the inclusion of ICI waste in the proposed changes to the MBC regulation, given the lack of industry input and the potential to seriously undermine a significant private sector industry.

We are requesting a six-month delay in the implementation of Bill 130 to allow OWMA and other private sector organizations time to properly assess the potential impact of proposed amendments to the act and the proposed changes to the municipal business corporation regulation that the government intends to implement upon the approval of Bill 130.

In order to fully address industry's concern, we urge the Ministry of Municipal Affairs and Housing to engage in a meaningful consultative process that involves all industry organizations representing contractors and service providers that might be impacted by this fundamental shift in public policy.

The act and regulation have the potential to seriously jeopardize the continued existence of the private sector waste management industry in Ontario, an industry that employs over 10,000 people, has significant capital investment in the existing waste management infrastructure of the province and contributes significantly to Ontario's tax base.

In closing, I would like to thank you for the opportunity to appear before you today.

**The Chair:** Thank you. You've left about three minutes for each party to ask a question, beginning with Mr. Hardeman.

**Mr. Ernie Hardeman (Oxford):** Thank you very much for your presentation. We've had a number of pres-

entations concerning the issue of having private sector business corporations for municipalities, but what we haven't really got in the past presentations, in order to really hear it—and I think it's in part of the presentation that you didn't read—is what part of it is unfair in the relationship between public and private. I think it's come up a number of times. Why is it that the private sector is nervous about competing with the public sector to do the same job? Could you tell me, from your perspective, what it is in there that concerns you?

**Mr. Cook:** Sure. I think in the submission we've handed out there are a number of bullet points under two categories. One is transparency and accountability, and the other is a level competitive playing field.

I think municipal business corporations, as they're proposed, will be allowed to have things like bonusing, so they'll be able to receive municipal assets—land, equipment—with basically no cost attached to them. They'll be able to interchange municipal employees between the municipality and the municipal business corporation. They can leverage the borrowing power and the guarantee of the municipality. They are really a creature that is halfway positioned between what is truly a private corporation and a municipality and the things that go with that. So it's the structure of how municipalities can provide support to these entities that isn't on the same sort of level that the private sector deals with.

**Mr. Hardeman:** If we're presently having a municipal service that's being provided by the municipality, that would be when they would transfer assets over to a private corporation, but at the end of the process, I think what we'd all be interested in is the most cost-effective and efficient way of delivering the service.

**Mr. Cook:** Absolutely.

**Mr. Hardeman:** So if it's just the transferring, since they can already keep doing it the way they are, what's the challenge of making that a private corporation?

**Mr. Cook:** I think two things. The municipal business corporations would be able to engage in business potentially with private sector partners. So we see scenarios where potentially a municipal business corporation is established, and the municipality has 51% ownership and they partner with a private company for 49%. They then let all the municipal work to that municipal business corporation, with no competitive processes. They simply award work and start to engage in the IC&I side of business. While they may have to compete for that, they'll have all of those advantages that will essentially disadvantage their private sector competitors. So they may well be able to appear to offer a service cheaper, but there's a cost to all of that. It's just that it's not embedded in the municipal business corporation; it's embedded backwards in the municipality. At the end of the day, it'll be a matter of not only delivering the existing service, which they can do today—they can set up a municipal business corporation today under the existing regulation—it's their ability to expand into the IC&I, what has not traditionally been a municipal area of interest.



1610

**The Chair:** Mr. Prue.

**Mr. Michael Prue (Beaches–East York):** I've asked these same questions before, and I hope you can provide some better answers than some of the last deputants.

But before I get to that, there's a statement here, and I'd just like to know on what basis it was made. It's on the second page of your brief. It says, "We have been advised that when Bill 130 is approved, the new municipal business corporation regulations will follow immediately with little or no consultation with the private sector." Who told you this?

**Mr. Cook:** That was relayed to us at a meeting of Ministry of Municipal Affairs and Housing staff on November 6, at which time a number of private sector groups were brought in to be informed of the intent to modify the MBC regulation.

**Mr. Prue:** So it was ministry staff who told you that they're going to go ahead with this, and that when they do, there will be no consultations around the regulations.

**Mr. Cook:** Our understanding is that they have been charged with drafting the regulation and preparing it so that it's available immediately to be enacted when the act is approved.

**Mr. Prue:** Okay. Just a few questions about municipalities: It's only fairly recently that most municipalities have begun to contract out their garbage. When I say recently, I mean within the last 20 years; before that, it was unheard of. Many municipalities, of course, are now of the opinion that they might be better off to go back and deliver the service themselves because it's cheaper. What is wrong with that?

**Mr. Cook:** I would certainly challenge you on the contention that it's cheaper, because any substantive information or assessment would indicate the opposite. I know there is certainly information for other industries, not to the extent that there is for waste management, but there is substantive information on waste management that shows that private sector service delivery is less expensive. Probably the most telling numbers are those published by the city of Toronto itself, which has both in-house and contracted services. The numbers show a 40% differential on average between the areas that are delivered by the municipality and those that are contracted. The information is clearly available in a number of reports and in municipal documents that show that difference between costs.

**Mr. Prue:** But if any municipality thought they could do it cheaper, why would you not want them to do it? Whether their methodology was flawed or not, it is an elected government. They have to come to the conclusion of what's best for their citizens. Why shouldn't they be able to do it?

**Mr. Cook:** I don't think I would argue with the principle that value to the taxpayer is the number one objective. What I question is whether a municipal business corporation and the structure, transparency and reporting mechanisms it will exist under (1) can deliver it at less cost, and (2) whether you'll ever be able to find

out that it did or didn't deliver it at less cost. A municipal program is very easy to assess in terms of what the costs are. It's accountable to council; it's accountable to the works committee. These corporations will be accountable to a board of directors. There will be costs and assets moved between the two structures that I would suggest would be extremely difficult to sort out, so you won't know if the taxpayer is getting value or not.

**The Chair:** Mr. Duguid.

**Mr. Brad Duguid (Scarborough Centre):** I understand the concern you're raising, and it's similar to a concern raised by the road builders as well. It's the concern that municipalities would enter into private business and compete and utilize some of the assets that they have, some of the resources that they have, to transfer from the taxpayer-provided base into that new corporation. I guess the question I have for you is, why would you suggest that would be non-transparent? Municipal budgets are public. Municipal financial transactions are public. If a member of the public chooses to go deeper into those transactions, through freedom of information if necessary, if not just a direct request, they'd certainly be able to determine, I would expect, any transfer of resources from the public sector into a municipal corporation.

**Mr. Cook:** You're quite right: On the municipal side of it, it may be more transparent. The question would be, how transparent is the municipal business corporation and its accounts and accounting of how it's dealt with those assets? If those aren't recorded as value, if they don't attach a market value to those assets, then they can claim delivering service at costs that are not including those kinds of assets that a private sector company would. So it's not necessarily that you wouldn't be able to track what goes in. I don't think you'd be able to track how the corporation deals with those assets and how that impacts on what they report to the public as their cost to deliver the service. I don't think we'd be able to find out.

**Mr. Duguid:** I could be mistaken, but I've never seen a municipal corporation to date that is not publicly accountable for every dollar they spend and not forced to approve and have approved their expenditures at the end of the day. They still have to report, whether it's through the city or directly to the public. My understanding is that it's usually through the city, but I could be mistaken. Maybe there's not a requirement for that. I expect there probably is. Are you aware that there is or is not?

**Mr. Cook:** From what I understand in what we've been told about proposed changes, it's certainly not evident to us that there are clear requirements for reporting.

**Mr. Duguid:** Okay. I appreciate that. Thank you.

**The Chair:** Thank you for being here today. We appreciate your delegation.

#### CITY OF MISSISSAUGA

**The Chair:** The next group we're going to hear from is the city of Mississauga, Mayor Hazel McCallion and Mary Ellen Bench. Welcome.



**Ms. Hazel McCallion:** Thank you very much. We appreciate the opportunity.

**The Chair:** Thank you for coming. If you could introduce yourselves, if you're both going to speak, and the group you speak for, you'll have 15 minutes. If you leave some time at the end, we'll be able to ask questions. We do have your delegation package here.

**Ms. McCallion:** I'm going to turn it over to our solicitor to make the presentation.

**Ms. Mary Ellen Bench:** Good afternoon, Madam Chair and members of the committee. My name is Mary Ellen Bench, and I'm city solicitor for the city of Mississauga.

Bill 130 constitutes the first formal review of the Municipal Act, 2001, and the province is to be congratulated on its continuing efforts to recognize municipalities as mature, responsible and accountable levels of government. Mississauga staff, myself included, have had a great deal of opportunity to have input into Bill 130 through formal and informal consultations with AMO and various other professional groups such as the Municipal Law Departments Association of Ontario, and for the most part, the province has listened to their concerns. At the political level, through the AMO MOU meetings, politicians have also had a chance to voice their concerns to the province, and again, I think a number of those concerns have been addressed in Bill 130. Those changes are very welcome.

Last week, AMO made a presentation to you that was centred on three values: trust and respect, accountability and predictability. We would draw upon those same themes in our presentation today.

With respect to the actual legislation, the introduction of the broad permissive powers is clear recognition that the province has the necessary trust and respect for municipal government to act responsibly within their areas of jurisdiction. Broad municipal powers provide much needed flexibility to deal quickly with issues that arise today in our complex society. In addition to the broad authority that's contained in sections 8, 10 and 11 of Bill 130, the move away from defined lists to general requirements that municipalities have policies around areas such as the sale and the disposition of land, hiring, procurement, notice and delegation are welcome changes. Again, these provide a great deal of flexibility so that municipalities can tailor policies to their respective needs. It's recognition that all municipalities are not the same, and legislation has to be flexible so that one size doesn't fit all.

1620

It's the position of the city of Mississauga that the move towards broad general powers could go even further by deleting the spheres of jurisdiction. This would mean that in two-tier municipalities all tiers would have the same powers that single-tier municipalities are provided. It's difficult to see where this would impact the current division of powers in two-tier jurisdictions, given that section 13.1 of the bill clearly prohibits the exercise of broad powers in two-tier jurisdictions in a way that

would interfere with an integral part of a system of the other tier. Right now, most of the spheres of jurisdiction are non-exclusive, so that in a non-exclusive sphere, it's the same as the broad powers that are going to be granted because either level could regulate. Change is not going to happen because you'd be interfering with an integral part of the system of the other tier. In those areas that are exclusively granted to upper tiers, the argument is even stronger that lower-tier municipalities cannot interfere because they certainly have the only say in what that system is. They're the only ones who have developed it. This protection from interference is clearly one that would apply to the spheres of jurisdiction as well. If this was done, then the general rule that works for the spheres now, where the upper tier prevails, would not be required. Instead, it would fall back to an integral part of the system of the other.

The revised rules respecting the regulation of business licences are also welcomed. The removal of the prescriptive and cumbersome requirement to explain the purpose of licensing is supported. The power to suspend a business licence with or without conditions for health or safety concerns for up to 14 days is also welcomed. New provisions respecting delegation of authority from council will provide greater flexibility to municipalities to better determine which matters need to be determined by council and which matters can perhaps more effectively be dealt with by a committee of council or by staff.

We also note, however, that Bill 130 does not address our request that municipalities regulate the vehicle storage fees charged by towing companies. Currently, municipalities have the authority to regulate the charges for the towing of a vehicle. Storage fees are not regulated, however, and as a result, they range from reasonable fees to very exorbitant fees. Municipalities receive many complaints from both citizens and insurance companies concerning these high daily storage fees for vehicles that have been towed. I believe AMCTO is making similar representations with respect to this issue.

The new broad authority for the Lieutenant Governor in Council to make regulations imposing limits and conditions on the exercise of municipal powers is a concern because it extends to all powers under the act and not just the new broad powers. This power applies when the province determines that it's necessary to freeze a municipal bylaw for a period of 18 months for the province to assess a provincial interest. In addition to the concern about this power being so broad, there is also a concern that it does not indicate what a provincial interest is. You've heard from AMO very clearly that the province should define what the provincial interest is in a way similar to what it has done under the Planning Act, where the provincial policy statement sets out clearly what the interest is. If the provincial interest is financial, then that should be stated. There are ways to do that in broad terms. If it's something else, that should be clearly stated as well. That would remove some of the uncertainty as to what the intent of these regulatory powers is. We support



AMO's position in this respect and express the same concern, that the arbitrariness of the new regulatory power is an issue.

We also have some serious concerns respecting the new requirement to conduct investigations of complaints respecting closed meetings. Bill 130 proposes that any person could request that an investigation be undertaken to determine whether any part of a meeting of council or a committee was closed to the public. The municipality is required to appoint an investigator to investigate any such complaints, and if no investigator is appointed, then the provincial Ombudsman is charged with this responsibility.

The big concern is that there is no discretion in the bill to prevent municipalities from being bombarded with frivolous and vexatious claims that must be investigated. Unlike provincial tribunals, including the Ontario privacy commissioner and the Ombudsman of Ontario, there are provisions that allow them to determine whether a complaint requires a full investigation or not. Similarly, tribunals such as the Ontario Municipal Board and the courts have such powers, and this is required for municipalities as well. Consideration in this respect has to also be given to the potential cost that these investigations can have to municipalities. We have seen already, through the Municipal Freedom of Information and Protection of Privacy Act, that some of the processes can be used by lawyers as kind of a free discovery so that they get all the municipal documents upfront. We've also seen incidents where you have certain residents who are continually filing applications, and this is another avenue for such vexatious claims to keep coming forward. So, at the end of the day, there has to be a system in place that allows an investigator to determine if it is necessary to conduct a full investigation or to be able to conduct a lesser-level investigation.

The powers of the investigator are also questionable because, at the end of the day, the investigator makes recommendations in a report to the municipality. For the most part, I think that's probably fine because the municipality will act on the recommendations. If a remedy beyond that is required, though, that still must be achieved through the courts.

With respect to accountability and transparency, Bill 130 contains a number of new measures. The authority to appoint an integrity commissioner, a local ombudsman, an auditor general and a lobbyist registry are tools that will assist municipalities. Again, by making these tools discretionary and not mandatory, the flexibility that it provides municipalities to deal with local situations in a local way is definitely a step in the right direction.

This increased flexibility, while ensuring accountability, is also noted in some of the new financial tools that are provided in Bill 130. Recognition of the ability of municipalities to prepare multi-year budgets, clear authority to create small business incubator programs, and fewer restrictions on municipal powers with respect to creating corporations are welcome tools. The added flexibility provided to municipalities to obtain an interest

in condominium corporations helps municipalities meet the parking demands caused by intensification. Right now, we are often left where we have to acquire spaces in condominium corporation buildings and go through a very complex, stratified ownership process to achieve those, so this is very welcome. Also, allowing municipalities to accept donations of shares for fundraising projects will benefit the public. In Mississauga we have a campaign called Riverwood to develop a park system along the Credit River, which is one place that we anticipate this will be a benefit, as quite often donations in shares are reflected today. So these are some of the changes that are certainly welcome.

Mississauga, however, does have a great concern with respect to the introduction of new accounting rules for municipal financial reporting that are contained in Bill 130. Currently, regulations require municipalities to follow generally accepted accounting policy rules set out by the Public Sector Accounting Board in preparing their financial statements. The Public Sector Accounting Board has implemented new rules around tangible capital asset accounting which provide little, if any, benefit to municipalities. There is no benefit in depreciating the capital value of a road or a community centre. At the same time, carrying out this requirement is very expensive. Finance staff at the city of Mississauga have assessed the cost of this to be in the range of \$428,000 to \$574,000 for the city for the year 2007 alone. As a result, it's difficult to see why taxpayers should be required to pay for this requirement established by the Canadian Institute of Chartered Accountants when there is no public benefit that municipalities can identify. We're therefore requesting that this section of the bill be amended to enable the Minister of Municipal Affairs and Housing to make regulations exempting municipalities from this or similar requirements that really are not appropriate in the municipal context.

1630

In conclusion, I thank you very much for providing this opportunity to appear and bring these matters to your attention. If you have any questions, we'd be happy to deal with them.

**Ms. McCallion:** Thank you, Mary Ellen.

**The Chair:** You've left less than a minute for each party. We'll begin with Mr. Prue.

**Mr. Prue:** In less than a minute, my question then will go to the whole question around the ability of the province and the minister to freeze the municipal bylaw for a period of 18 months. I'm unaware that this exists in any other province in Canada. Have you done any research into this? This has come right out of left field, as far as I know. I have no knowledge of this. Can you explain?

**Ms. Bench:** We haven't seen it in terms of general municipal legislation. The only thing comparable is an interim control bylaw in the planning context, but never in the general municipal context.

**Mr. Prue:** But that interim control bylaw is done by the municipality itself, not by the ministry.



**Ms. Bench:** Yes.

**Mr. Prue:** Not by the ministry.

**Ms. Bench:** Not by the ministry. That's right.

**Mr. Prue:** You have obviously voiced your concerns. You've done it today; you've done it in the past to ministry staff. What has been the response?

**Ms. Bench:** It hasn't changed. It's in Bill 53, the City of Toronto Act, as well and it's going to remain is my understanding, at least at the staff level.

**The Chair:** Thank you. Mr. Duguid.

**Mr. Duguid:** A minute and a half doesn't give us much time, but—

**The Chair:** You have only a minute.

**Mr. Duguid:** Your Worship, I want to thank you for coming here today. But more than that, I want to thank you for your ongoing leadership at AMO and working with the province as we reshape the relationship between municipalities and the province. I think we're making great progress. We still have a way to go, but your assistance in that and your leadership have been very helpful to us.

My question really surrounds other questions that we've had during the course of the hearings. Do you feel that not only Mississauga but all municipalities are mature enough to make decisions with regard to appointments of ombudsmen, auditors general, integrity commissioners? Are they mature enough to put in place mechanisms that would be responsible to the public, accountable, and ensure that those bodies and those individuals would be independent, or do you think that they should be dictated to for those particular appointments?

**Ms. McCallion:** I think we have the ability to do that. Quite honestly, in my opinion it is essential, but it should not be mandatory either. In other words, it should be the desire of the municipality whether they want to appoint an ombudsman or an integrity commissioner. It shouldn't apply to everybody.

**The Chair:** Thank you. Mr. Hardeman?

**Mr. Hardeman:** Thank you very much for the presentation. Madam Mayor, your hard work on behalf of the constituents must be rewarded in the good re-election results in Mississauga. I guess it put Mississauga on the map as the only place where anyone could get that kind of plurality in the race for mayor.

**Mr. Prue:** Without putting up a sign.

**Mr. Hardeman:** I wanted to just quickly touch on the ombudsman. We've had a lot of concern expressed thus far by the Ombudsman that the municipally appointed ombudsman in this bill has absolutely no criteria around how they will operate. It could be just an employee of the municipality.

Your concern is that they would not be able to dismiss a frivolous application, and from what we've heard thus far, it means that the municipality could set the criteria for what the responsibility of the ombudsman would be because it isn't defined in the bill. In fact, it could say that unless there is this much of a problem, everything is frivolous. I'm wondering, from the legal perspective,

where we got the idea that this does not allow dismissal of frivolous applications on behalf of the local ombudsman.

**Ms. McCallion:** I'd like to answer it. First of all, who appoints the provincial Ombudsman and who sets the criteria?

**Mr. Hardeman:** The province.

**Ms. McCallion:** Thank you. We'll take it at the local level too.

**Mr. Hardeman:** My understanding is that this allows that. This bill doesn't say, "The province is going to set the standards for the municipal ombudsman." I'm just trying to figure out why we have that concern, because I would have it too.

**Ms. Bench:** The Municipal Law Departments Association of Ontario expressed that concern in the event there is no standard set, so you run into a situation where we're all inconsistent; we're all facing challenges. There was a concern expressed that there should be a set process in there like in legislation, in the OMB Act, for example, or in the Rules of Practice before the courts. There are set clauses providing that specific authority. When you put that together with the civil rights and property clause in here that's also very unclear, it raises that concern.

**The Chair:** Our time has expired. Thank you very much for being here today.

#### ASSOCIATION OF MUNICIPAL MANAGERS, CLERKS AND TREASURERS OF ONTARIO

**The Chair:** Our next group is AMCTO, the Association of Municipal Managers, Clerks and Treasurers of Ontario. Welcome. Please get yourselves settled, and if you can introduce yourselves and the organization you speak for for Hansard. When you do begin, you'll have 15 minutes. Should you leave time at the end, there will be an opportunity for us to ask questions.

**Ms. Kathy Coulthart-Dewey:** My name is Kathy Coulthart-Dewey. I am president of AMCTO, the Association of Municipal Managers, Clerks and Treasurers of Ontario. I am here to speak on behalf of my association about Bill 130, the Municipal Statute Law Amendment Act. With me today is Andy Koopmans, AMCTO's executive director. We're here today to express AMCTO's support for Bill 130, despite certain reservations, and to offer our suggestions for improvements to the bill.

First, let me say a few words about the association. We are Ontario's, indeed Canada's, largest association of municipal managers and professionals. Our almost 2,200 members work in various departments in 95% of the municipalities in Ontario, ranging in size from the city of Toronto, with 2.5 million residents, to Tay Valley township, with a residency of 5,000, where I am CAO. Founded in 1938, AMCTO has adopted the mission of promoting excellence in municipal administration and management.



One of AMCTO's key principles is our ongoing review of provincial policies, legislation, regulations and programs. In this work, we draw on a large and diverse pool of expertise within our membership. The perspective that we bring to the task is a very practical one. We ask such questions as, does the initiative take into account the diversity of municipalities? As we know, one size does not fit all. Does it avoid prescriptive solutions that hinder the development of innovative solutions? Have all of the implications—legal, financial, liability and human resources—been included in the review?

We of course also endorse the principles of the Minister of Municipal Affairs and Housing, recognizing, when he announced the review of the Municipal Act in 2004, that municipalities are an accountable and responsible order of government and that the days of micromanagement by the province are past.

This is the perspective that AMCTO has applied to our review of Bill 130 and which forms the basis of our presentation that I'll make to you today.

With respect to support of the bill, AMCTO believes that by broadening municipal authority and removing outdated restrictions, Bill 130 will lead to better decision-making and service delivery by Ontario municipalities. Among the provisions in the bill that will help us achieve that goal are: new wording to ensure that municipal powers are interpreted broadly; flexibility for councils to create, design and modify municipal service boards and corporations to deliver municipal services; removal of prescriptive rules governing the disposition of land, hiring of employees and procurement of goods and services; replacement of specific notice provisions which authorize councils to adopt general notice policies; streamlining of licensing and registration parts of the Municipal Act and harmonizing and enhancing municipal enforcement powers; and, finally, the resolution of the problem that plagues many municipalities that crown liens often create for municipal tax sales.

Taken together, these changes create a legislative framework that Ontario municipalities need to meet public expectations for first-rate customer service and prudent financial management.

We commend the Ontario government for bringing forward Bill 130 and hope that the Legislature will approve the bill as soon as possible.

1640

Notwithstanding many of the positives, AMCTO sees certain areas where the bill falls short of the vision of the Minister of Municipal Affairs and Housing when he painted that picture in 2004 and launched the review of the Municipal Act.

There are four major concerns that are covered in our presentation. The first major concern is Bill 130's failure to address the financial needs of municipalities. The province has rejected AMCTO's call for greater municipal control over local property tax policy, as well as greater authority to raise revenues through other forms of taxation. We remain hopeful that the Provincial-Municipal Fiscal and Service Delivery Review that has

recently been announced will address these issues, along with the critically important matter of reliance on property taxes to pay for income redistribution programs.

The second major concern is the power the province is giving itself to circumscribe municipal decision-making through regulation. Bill 130 not only carries forward most existing regulation-making provisions in the Municipal Act; it also creates new ones. The ability of a minister or the cabinet to change the rules of the game overnight creates terrible uncertainty for the conduct of municipal business. We hope that the regulation-making provisions in Bill 130 will be replaced with substantive provisions wherever possible.

The third major concern is the provision in Bill 130 allowing the province to suspend bylaws enacted by municipalities—again, by regulation. This will mean even greater uncertainty for municipalities, their stakeholders and their partners. We urge that Bill 130 be amended to at least require the province to consult with affected municipalities and to state the provincial interest before exercising a suspensive veto.

The final concern relates to the timing of implementation. We don't want to see the delay of what we understand is the target effective date for this legislation: January 1, 2007. On the other hand, some of the new requirements will need a longer lead time. Examples include the updating of municipal notice bylaws and the establishment of procedures for complaints about closed meetings. We hope that the government will take this into account when they decide when to proclaim certain parts of the act.

Such are the overarching concerns of AMCTO with respect to Bill 130. We respectfully ask the standing committee to take these concerns into account when the bill receives clause-by-clause consideration.

I would now like to cover some of our suggested amendments to specific provisions of Bill 130 that were included in our September 22 brief to the Minister of Municipal Affairs and Housing, a copy of which has been included in our material provided to you today. There is not time to discuss all of these amendments; however, I will zero in on just a few. I will go through them in the order that they appear in Bill 130 rather than the order of importance, with an eye to facilitating the committee's consideration of these issues during clause-by-clause.

Bill 130 does not address the problem municipalities have long faced that some municipally imposed charges added to the tax roll can be included in the tax sale process while others cannot. This leads to significant administrative difficulties and significant revenue losses. Our position is that all such amounts should have priority status under subsection 1(3) of the Municipal Act. If the committee does not want to go that far, priority status should at least be granted to the costs that a municipality incurs in carrying out work on a property where the owner refuses to obey an order. This could be accomplished by simply inserting one word, "priority," before the word "lien" in the new subsection 446(6) of the



Municipal Act. This change would, among other things, go a long way towards filling the gap in the legislation that was recently passed to impose responsibilities on municipalities for inspecting and remediating properties used for marijuana grow ops.

AMCTO fully supports the principle that meetings of municipally elected officials should be open to the public, with limited exceptions to protect privacy and essential business interests of the municipality. We have, however, previously recommended that the current list of exceptions found in section 239 of the act be expanded to allow closed sessions where council is undertaking strategic planning, receiving technical briefings from staff or participating in professional development activities. The government has endeavoured to address this issue with a new provision that reads, "A meeting may be closed to the public if, at the meeting, no member of the council ... discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council."

We believe that the vagueness of the phrase "materially advances" will give rise to controversy, dispute and litigation, particularly now that council's decisions about open meetings are subject to statutory complaint procedures. Accordingly, we have suggested an alternative subsection 239.2(1) of the act which eliminates this vagueness and also addresses our previous request. The specific details of this suggestion are attached to the material that I presented to you today.

With respect to the keeping of minutes, Bill 130 adds provisions to the Municipal Act clarifying that municipalities must record proceedings at closed meetings of councils and committees. However, the new subsection 239(8) says that this requirement "may" be satisfied by a record of the meeting made by the clerk. This creates uncertainty about who exactly is responsible for keeping those minutes. Accordingly, we recommend that subsection 239(8) be reworded to clarify that, in the case of a municipality, the requirement of subsection (7) "shall" be satisfied by a record of the meeting made by the clerk. This change will ensure that there's a central focus on the maintenance of corporate records and that the public has access to them.

We are pleased that many of the specific notice provisions in the Municipal Act are being removed by Bill 130. Municipalities need this flexibility to develop notice proceedings appropriate to local communities and their individual circumstances. In my own municipality, for example, we have no local daily newspaper. However, Bill 130 leaves 14 such provisions in the Municipal Act and does not address notice provisions in regulations. AMCTO recommends that the specific notice provisions remaining in the act be deleted or, at least, that a provision be added giving council the option to adopt an alternative form, manner or time for giving that notice where the prescriptive notice provisions exist in the legislation. If the municipality does not partake of that option, then of course the legislative provisions would prevail.

Bill 130 would impose a new requirement that councils adopt a policy on the "manner in which the municipality will try to ensure that the rights, including property and civil rights, of persons affected by its decisions are dealt with fairly." Municipalities are fully cognizant of the ramifications of failing to respect property and civil rights as required by common law, by the Constitution, by provincial legislation and by municipal bylaws. However, an all-embracing, open-ended policy as envisioned by the provisions in paragraph 6 are extremely difficult to operationalize. The policy will inevitably fall short of the expectations of one part of the community or another and will give rise to uncertainty, controversy and even litigation. Accordingly, we recommend that paragraph 6 be dropped from the bill.

Such are some of the improvements that AMCTO believes can be made to Bill 130 through amendments in committee.

Finally, I would like to comment briefly on the submission that the provincial Ombudsman made to the committee last week. AMCTO supports the need for accountability and transparency in all orders of government—federal, provincial and local. Where we differ with the provincial Ombudsman is that we believe the elected municipal councils can be trusted to devise procedures that work for their communities. We do not feel it necessary that the provincial Ombudsman should be authorized to investigate the municipal sector beyond the Bill 130 provisions allowing him to do so if the municipality fails to appoint an investigator. We are confident that Ontario municipalities will continue to demonstrate their ability to act responsibly through their adherence to the accountability and transparency provisions of Bill 130 in the years ahead.

1650

**The Chair:** You have one minute left.

**Ms. Coulthart-Dewey:** Such are the comments of AMCTO with respect to Bill 130, the Municipal Statute Law Amendment Act, 2006. The concerns we have raised about the bill and the amendments we have recommended must be viewed in the context that we strongly support Bill 130 overall. AMCTO believes that the new Municipal Act that will come out of Bill 130 builds on the legacy of the 1849 Baldwin Act and the 2001 Municipal Act to move Ontario along the road towards realization of the vision of municipalities as an accountable, distinctive and responsible order of government, equipped to serve the needs of the public.

I thank you very much for offering us the opportunity to speak to you today. If there is time, we would be happy to answer questions.

**The Chair:** I have 20 seconds left in total, so I don't think there is time. We appreciate the depth and the detail you took in to do this presentation. Thank you very much for being here today.

CITY OF WINDSOR

**The Chair:** Our next delegation is the city of Windsor. Good afternoon and welcome. If you could



identify yourself and the group that you speak for, you'll have 15 minutes. If you leave time at the end, there will be an opportunity for us to ask questions.

**Mr. John Skorobohacz:** Thank you very much. My name is John Skorobohacz. I am the city's chief administrative officer and it's my pleasure to be here this afternoon to speak to you with regard to the city of Windsor's position on Bill 130, the Municipal Statute Law Amendment Act.

I'm going to deviate slightly from the written submission that I have brought and presented to you. I'm going to try to focus on the highlights of our submission so that perhaps we could get you back on track and moving forward.

Let me say that the city of Windsor in principle supports the majority of the changes that are presented in Bill 130, and certainly we welcome the recognition that municipalities are an accountable and responsible order of government. My colleagues just previously said that the minister did indicate that as part of the reason and the rationale for moving forward with the legislative changes.

Let me emphasize that the city of Windsor agrees and supports the basic direction of the proposed legislative reforms. We believe there is a general consensus that these changes represent good news for municipalities. First of all, the changes should allow us to be more flexible with respect to the legislative framework that we operate under. The changes should also broaden the scope of our authority. These changes should reduce the number of specific restrictions and controls that the province has over the years exercised over municipalities. Finally, the changes should allow municipalities to be more effective in the delivery of services to our communities and enable municipalities to fulfill those responsibilities.

I'm aware that you've already heard from several municipal associations and organizations as well as municipalities that have highlighted the positive aspects of the bill, so I will not belabour the points they've already raised, but simply add our support and reinforce those points.

First and foremost, we believe that the streamlining of the licensing and the registration provisions of the Municipal Act, part IV, is a positive development. In addition to that, we also believe that the authority to require payment of an administrative penalty for parking bylaw infractions, subject to issuance of enabling legislation, is also a very positive measure. We also see that the removal of provisions relating to service delivery performance reporting, otherwise known as the section 300 reports, is a positive and mature step.

The new power allowing municipalities to suspend licences for up to 14 days is also a positive measure. However, the city of Windsor would suggest respectfully that that should be increased to 28 days in order to allow the parties to adequately prepare for the hearings.

Also, we are pleased with respect to the provisions addressing the problem that crown liens create for muni-

cipal tax sales. We're also very supportive of the fact that we have specific authority to adopt multi-year budgets. Removal of many specific notice provisions and authorizing councils to adopt a general notice provision is also seen as a progressive move. Removal of unnecessary prescriptive rules for the disposition of land, hiring of employees and the procurement of goods and services is also very beneficial to us. Finally, the consolidation, rationalization and expansion of enforcement provisions includes a number of new powers. The creation of offences, the creation of a system of fines, entry provisions, restraint of continued bylaw contravention, the creation of work orders, the closing of premises and also the inspection of buildings containing marijuana grow operations are all welcome additions.

However, despite the various positive measures, the city of Windsor would also like to address some of the shortcomings of Bill 130. In terms of the prospect of regulations, we are concerned that without knowing the specific context of the regulations and in which areas the government intends to maintain existing regulations or issue new ones, it makes it difficult for municipalities and other stakeholders to evaluate the proposed legislation in a fully informed manner.

In addition to that, Bill 130 reserves extensive power by the provincial government to temporarily suspend a municipality's powers for a period of up to 18 months by enacting a regulation, if deemed necessary, in the "provincial interest." The bill should be amended, in our view, to have some type of mechanism in place to ensure consultation and identification of what the provincial interest is prior to exercising any action to suspend the municipal powers.

In addition to that, we are also concerned about expanding the authority of municipalities to raise revenue and make other financial decisions. The bill, in our view, does not provide any concerted opportunities with respect to the financial needs of the municipalities and in fact makes very few changes to the provisions in the Municipal Act dealing with certain financial issues. Municipalities desperately require broader financial authority to raise revenues and to make other financial decisions to address financial pressures.

The city of Windsor is disappointed that it will not be receiving the limited new taxing powers offered to the city of Toronto. Not only has Bill 130 failed to give municipalities additional revenue-raising tools, it also does not provide the municipalities with control over policy governing the distribution of existing property taxes. More permissive taxation provisions would not fully offset the high cost of providing the downloaded services, but they would provide a means to generate some revenue required by cash-strapped communities. That being said, the city of Windsor does applaud the effort of the government to undertake a wide-ranging review of the provincial-municipal relationship by way of the provincial-municipal fiscal and service delivery review announced this summer by the Premier.

With respect to bonusing provisions, the municipality is concerned that strategies for promoting economic de-



velopment within the city of Windsor are not addressed as a key priority within the legislation. The city of Windsor is facing some difficult and uncertain times. A structural change in the traditional North American automotive manufacturing sector, along with reduced tourism following 9/11, SARS and a stronger Canadian dollar, as well as the province-wide public smoking ban, has negatively impacted the American tourist as well as the local patronage of our bingo industry, leading to drastically reduced gaming revenues and significant challenges for the many charities in our community that have historically relied on a vibrant bingo and gaming industry. Greater local autonomy and flexibility is needed in the area of economic development to allow municipalities to deal with local economic circumstances.

**Licensing and regulatory powers:** In addition to that, as noted previously, we are pleased to see the streamlining within the legislation. We do note that we have concerns that the following three issues were not addressed: There does not appear to be explicit authority for municipalities to regulate vehicle storage fees charged by towing companies; it does not remove the requirement for municipalities to repay licence fees where the minister retroactively limits municipal authority to license; and, although the city of Windsor is pleased with the new power that allows municipalities to suspend licences, as I stated previously, our request would be to see that suspension for up to 28 days.

Additionally, the municipality believes that it is in their best interest to have the authority to set the hours of operation for restaurants and bars.

In conclusion, please keep in mind that the municipal councils are elected bodies. They're entrusted by the citizens of the community to make decisions that are in the best interest of the community at large. We urge the province to recognize the tools required to govern in an effective and responsible manner. It is suggested that drafting legislation with the expectation that municipal governments will utilize the powers bestowed upon them to govern effectively and responsibly will both strengthen the relationship between the municipalities and the province and provide municipalities with the tools necessary to govern in an accountable and responsible manner.

The city of Windsor, in conclusion, supports the general direction of this bill, and we're optimistic that our voices, along with the voices of those who have appeared before this committee, will be heard and our concerns will be considered before the final version of Bill 130 is enacted and proclaimed.

Thank you, Madam Chair, for this opportunity. I'd be pleased to answer any questions.

1700

**The Chair:** You've left slightly over two minutes for each party to ask a question, beginning with Mr. Duguid.

**Mr. Duguid:** Thank you very much for taking the time to come to Toronto and join us and partake in these consultations.

You raised a question or an issue that we didn't hear too much on from the other municipalities—some prob-

ably felt more strongly than others—and that's alternative sources of revenue. The city of Toronto raised that very loudly and very strongly. For AMO and others, while they would have been welcome to have a look at it, it wasn't something that seemed to be front and centre. In fact, I think they were relatively satisfied with the idea that we would sit down with the municipalities over the course of the next 18 months and look at ways that we could continue to work with municipalities in reviewing the way some of the services are provided and funded. Infrastructure, public health, emergency services, social services and housing and some of the special challenges unique to some of our various communities are just some of the issues that will be on the table. Are you planning on being involved in those discussions, and will you be ensuring that Windsor's voice is heard in AMO as we move forward with those?

**Mr. Skorobohacz:** Most definitely we will.

**Mr. Duguid:** We'd appreciate that, because it does seem that you have maybe a little bit more aggressive needs in terms of revenue generation than some of the others have expressed, and I appreciate hearing from you on that.

The second question I have, with the limited time: You talked about the bonusing provision, and that's something I haven't heard from other municipalities. It has been discussed. There's always the concern that bonusing will make municipalities compete against each other for businesses and, at the end of the day, all that will happen is the tax base will go down and the same businesses will locate. Have you looked at other ways to try to attract businesses? There are some community improvement plan provisions in the new bill as well.

**Mr. Skorobohacz:** Most definitely. As a matter of fact, the city has engaged in a number of community improvement planning processes. Our biggest challenge as a border community is competition with the state of Michigan. From that perspective, we believe that there needs to be greater opportunities for municipalities, especially border communities, to remain competitive with other communities on the other side of the border. So that's the context in which I come today: seeking those additional opportunities.

**Mr. Duguid:** Thank you very much.

**The Chair:** Mr. Hardeman?

**Mr. Hardeman:** Thank you very much for your presentation. It was very thorough as it relates to how the issues in Bill 130 will improve the operation of municipalities.

When we started the hearings on this bill—in fact, even before we got to the public hearings—it was quite evident when we heard presentations on behalf of municipalities that the major part of the bill was quite supportable by municipalities, because it does a lot of things to further their ability to operate effectively.

One of the concerns that was expressed, and it has come from almost every municipal presentation that has been presented, was about the regulatory authority to override municipal decisions. In fact, today we heard a



number of presentations where they actually said that the provincial control of the operation is greater after Bill 130 is passed because there are places where there was no regulatory power before and there is now.

Is that a major concern to the city of Windsor: that though it appears we're getting a lot more authority, that authority is quite limited by the ability of the minister at any point in time to make a regulation to take that authority away?

**Mr. Skorobohacz:** No question about that. Our concern is twofold: First of all, we would like to know what the provincial interest is prior to any regulation coming forward. Also, our concern is with respect to the suspension of municipal decisions. The ability to suspend those decisions for up to 18 months is a major concern to all municipalities.

**Mr. Hardeman:** The other thing is the issue of accountability and transparency in local government, in all government, in fact. As the minister spoke to this bill, he talked a number of times about this bill increasing transparency and accountability in municipal government. That would be not transparency and accountability to the provincial government but to the people that they are governing. What part of the bill would you suggest does that? What is it, of all the things we're doing here, that makes accountability to the taxpayers greater or that makes transparency to the taxpayers greater than what is in the present Municipal Act?

**Mr. Skorobohacz:** I would suggest to you that certainly the issue of transparency continues to follow in this legislation as it has in the previous legislation with respect to the various aspects of closed meetings. There are also increased provisions within this current bill that reflect upon the potential to create an ombudsman. Certainly, that aspect of it is an enhancement to the existing transparency concerns.

There are also opportunities within the legislation itself to engage the community in a more appropriate manner, I would suggest, as opposed to having the regulatory framework that suggests how we have to approach our residents and our citizens. It provides us with the flexibility to approach different issues in a different way. At the present time, the current legislation requires notice provisions to be followed in a standard, almost prescriptive type of fashion.

**The Chair:** Thank you. Mr. Prue?

**Mr. Prue:** I have a couple of questions. You listed here a whole bunch of things that are not very good things that are happening in Windsor—the downturn of the automotive sector, reduced border traffic, the smoking ban—but there's no mention here at all about the recent controversy of losing the racetrack and the ice rink going to Tecumseh. How is that going to affect Windsor?

**Mr. Skorobohacz:** If you examine the matter from a regional perspective, certainly the racetrack remains within the region, and all the efforts the city has put forward over the past several years with the county of Essex have been on a regional basis. From the city's

perspective, yes, that is a loss to the local municipality, but certainly it remains within the region, and that continues to strengthen the region's employment base.

From the perspective of the Ice Track itself, that's a separate issue, and that's something I'd prefer not to make any comment on.

**Mr. Prue:** Okay, but as per the loss, my understanding was that Windsor relied to a great extent on the revenues for its food program for kids and stuff. Those revenues may be lost. Is that in fact true?

**Mr. Skorobohacz:** That could be a possibility. It remains to be seen at the end of the day if in fact the racetrack itself will relocate and whether the slot revenues the city has enjoyed to this point in time in supporting a variety of different social causes within the community will be lost to the region itself.

**Mr. Prue:** This is where I go back to the first point. You're looking for additional revenues. Would you accept the revenue-generating process that Toronto has, or do you think that's enough? There are some who opine in Toronto that that won't do it: "Thank you very much for the money, but it's small amounts."

**Mr. Skorobohacz:** I would have to agree. I believe that there need to be much more creative approaches applied to the way municipalities could generate revenues. I don't profess to have all the answers with regard to the magnitude or the range of those opportunities, but I would agree with your assumption or your analysis that in fact it doesn't really go that far with respect to the needs that the larger urban municipalities have.

**The Chair:** Thank you. Sorry; we've exhausted our time. Thank you very much for coming today. We appreciate it.

**Mr. Skorobohacz:** Thank you.

**Mr. Prue:** I tried to squeeze in as many as I could.

**The Chair:** You did very well. I gave you some latitude, but I couldn't go anymore.

#### NEWMARKET TAXPAYERS ASSOCIATION

**The Chair:** Our next delegation is the Newmarket Taxpayers Association, Mr. Yorston.

**Mr. Ray Yorston:** Good afternoon, Madam Chair and gentlemen.

**The Chair:** Please make yourself at home. If you need to pour yourself a glass of water, please do that. When you begin, if you could say your name for Hansard and the organization you speak for, and you'll have 15 minutes. If you leave time at the end, we'll be able to ask questions. We do have your submission in front of us.

**Mr. Yorston:** My name is Ray Yorston. I'm with the Newmarket Taxpayers Association. Our concern regarding Bill 130 is to do with section 223.19, referring to the auditor general. We wish to comment on and make recommendations regarding the proposed provincial legislation that authorizes municipalities to appoint an auditor general who reports to council and who shall perform duties as may be assigned to him or her by the municipality. We feel this is a glaring weakness in this



legislation. Therefore, we take the view that there would be no guarantee that an auditor general appointed by a municipality would be independent or impartial. This is the same view taken by Mr. André Marin, the Ontario Ombudsman, regarding municipalities appointing their own ombudsman.

1710

To give you some background—and I'll use Newmarket—let's look at the track record of the town of Newmarket and see how effective is an auditor general appointed by council, where his duties are determined by that council.

Case 1: From 2000 to 2006, the town's portion of property taxes increased 50% for the average assessed home. This is an average of 8.3% per annum. Would an auditor general who reported to council have been allowed to inform the property taxpayers that, due to out-of-control spending by the town of Newmarket, their money was not being wisely spent?

Case 2: What is particularly disturbing is the true increase in the town's portion of property taxes from 2000 to 2002 that the public was not told about. Through the Era Banner, the town stated that for the average assessed home the town's portion of property taxes would increase 8.5% for 2001 and 7.3% for 2002. That's 16% for these two years. The actual increase was 31% for these two years based on the town's own historical records. The property tax increases experienced by our executive was about 27% over those two years. Furthermore, these inordinate tax increases are built into the taxes we pay today.

When the town was approached to give an explanation, they indulged in convoluted obfuscations, stating that the tax hikes which were quoted in the Era Banner were accurate and there was no need for corrections. The letter made no attempt to explain the discrepancies between what the public was told through the articles in the Era Banner and what they ended up paying. This means that certain members of council and senior staff misinformed the public regarding the true property tax increases. Would the auditor general have informed the public? How effective would an auditor general have been reporting to council under these circumstances, particularly where his or her duties are determined by council?

It should be noted that the mayor and regional councillor are on the audit committees of the town of Newmarket and York Region. There are other egregious examples we could quote.

Independence of the auditor: The public good is the overriding concern and therefore the independence and impartiality of the auditor are crucial, particularly as there are no opposition parties at the municipal level, as there are at the federal and provincial levels, to help keep the municipal governments of the day honest and accountable. How effective would an auditor general hired by a municipality be where his future career prospects and audit duties are determined by the very people whose decisions he may have to audit? Would the auditor

general have the independence and authority to report to the public on any wrongdoing or wasteful spending habits by the municipality? It is essential that decisions by council be subject to audit, particularly where the impact on property taxes will be significant over a lengthy period of time. These duties are best performed by the Auditor General for the province of Ontario who will be truly independent and who will perform value-for-money audits and report his findings to the public.

Regarding the city of Toronto, we understand that the provisions of Bill 130 concerning an auditor general are modeled on the city of Toronto's auditor general. This may work for the city of Toronto, which is akin to a city-state or a province within a province, where the councillors are full-time and are of a generally higher calibre than otherwise to be found in much smaller municipalities, and where their decisions are much more open to public scrutiny, particularly by the media. However, this model would be totally inappropriate for municipalities such as Newmarket, where the councillors are part-time, where in a lot of cases they have no conception of financial planning and cost control and tend to overly rely on the mayor and senior staff for direction and advice without critically questioning budgets and major capital expenditures. This is unacceptable, as the public good is not being protected.

Regarding the costs of operating a team out of the Office of the Auditor General, we feel this approach would also be cost-effective. For example, if a team of six auditors reporting to the Auditor General audited the region of York and its nine municipalities on a rotational basis at a total cost per annum of, say, \$760,000—that's made up of \$100,000 per auditor to cover salary, benefits, travel and training, plus share of overheads, etc.—that would be \$76,000 per municipality, on average. Based on Newmarket's 2006 residential property tax rate, the impact would be \$3 per annum for the average assessed Newmarket taxpayer. This cost would be more than offset by operational and capital savings resulting from the Ontario Auditor General's audits and certainly in the case of Newmarket where we live. In practice, the cost charged to each municipality and the region of York would likely be based on the number of hours spent on the audit of each municipality.

Recommendations:

(a) That audits of municipalities be conducted by the Auditor General for the province of Ontario—excepting the city of Toronto—who will determine the audit duties and perform value-for-money audits. Such actions will ensure independence and impartiality, help improve corporate governance, including effective financial planning and cost control, which could lead to reductions in costs and property taxes.

Furthermore, audit teams operating out of the Office of the Auditor General for the province of Ontario would receive a higher level of training, be much more independent, motivated and effective. Such a structure will build up a bank of knowledge and experience to draw upon to provide a superior level of service to the



public to help ensure that their money is being spent wisely. Audit findings would be reported to the public.

(b) Complaints regarding municipal waste and wrongdoing: Establish a complaints/whistle-blowing department within the Office of the Auditor General of Ontario. Only legitimate complaints backed by evidence would be dealt with. At present, there is no effective mechanism available to the public to get their concerns heard and action taken regarding municipal incompetence and wrongdoing. The Ministry of Municipal Affairs, we are told, is not a policing ministry and only three audits have been carried out in the last 10 years. So where is the democracy? What about the public good?

The public's legitimate complaints must be heard and action taken. This would help build public trust and increase citizen participation in municipal affairs. After all, it is our money that is at stake.

Thank you for receiving our presentation. To quote Cicero, "The people's good is the highest law." We fervently hope our recommendations will be accepted and implemented. Thank you.

**The Chair:** Thank you. You've left just over two minutes for each party to ask questions, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. We haven't had many presentations concerning the citizens and how they feel about changing the way municipalities will be doing the governing. That's why I very much appreciate yours. I want to just maybe caution on the presentation, where you talk about full-time councillors being better than part-time councillors. I'm sure there are a lot of good municipal politicians in Ontario who would like to disagree with you on that. The calibre of politicians in some of the smaller municipalities, of which I was one, would take exception to the fact that, somehow, because they get paid more and spend more time doing it, they're better at it.

**Mr. Yorston:** I accept your point.

**Mr. Hardeman:** But the issue about the auditor and the Auditor General is a very good one. I think it relates to the part of the act too that deals with the ombudsman, who can be appointed to look after whether council is holding closed meetings when they shouldn't and things like that, and the fact that we need to find a way to make them arm's length from the politicians who are being investigated. The issue of having the Provincial Auditor do it has merit, but at the same time do you think it's possible that you could have the parameters set so that municipalities could appoint their own auditor and their own ombudsman at arm's length from themselves?

**Mr. Yorston:** No, absolutely not. I think it would be impracticable to follow that route. It would be an absolute and complete disaster. There has to be independence. We've been involved with the town of Newmarket for some time. We've attended all their budget meetings, particularly 2005 and 2006. I have given you an example where our taxes went up 31% in two years for the average assessed home. When we countered and asked ques-

tions on that, we just got gobbledegook answers. There was no oversight, no accountability, no transparency.

**1720**

The people's good is not being looked after. The crucial word is "independence." There has to be that independence. Just imagine an ombudsman, a local auditor reporting to council about the future. What about the salary prospects? It doesn't work in practice. It has to come from the Auditor General.

**Mr. Prue:** What you haven't said here is of some interest to me. This bill also allows—and you've not commented on it—for the possibility of more closed sessions, sessions to which the public is not invited, sessions in which the mayor and council can, although not making decisions, hold meetings in private. Do you approve of them holding meetings in private to which you are not—

**Mr. Yorston:** No. I don't approve of them holding meetings in camera at all, because in certain situations where meetings which should have been held in public have been held in camera, information resulting from those meetings which was absolutely crucial was not disclosed to the public, and this was again a mark against the system as it presently works.

**Mr. Prue:** Okay. So you would not want to see the present system expanded to include even more private meetings?

**Mr. Yorston:** No.

**Mr. Prue:** You go on to talk about tax increases. I assume the mayor and council were asked to comment and just didn't comment. Did any local newspapers or anyone other than your citizens' group take this up?

**Mr. Yorston:** We took it up with a person who is now the mayor of Newmarket when he was a councillor. We asked him to explain the discrepancies between what was reported in the Era Banner and what we actually paid, and he just ducked the question. He ended up by saying that what was reported in the Era Banner was correct. How can it be correct when the average increase per their own statistics was 31%, whereas what was reported in the Era Banner was 16%?

I went to the Ministry of Municipal Affairs and I was told, after talking to mid-level types, to vote them out at the next election, to go to the police, to sue them. The Newmarket Taxpayers Association is supposed to go to the courts and sue the town, which will defend itself with our money? This is absolutely crazy.

**Mrs. Maria Van Bommel (Lambton-Kent-Middlesex):** Thank you for your presentation, sir. I'm very interested in the whole concern about the independence of the auditor. Your suggestion that this be done by the Provincial Auditor—how frequently would that occur? Would that be on an annual basis? And how would we manage to do that throughout all the municipalities in this province?

**Mr. Yorston:** If you take the region of York just as an example, which is a region plus nine municipalities, I would imagine that each municipality would be audited every year, perhaps every second or third year. It would



depend on how the audits went or how they initially proceeded. If there was a great need for more frequent auditing, then that's what would have to happen.

I would envisage that if, say, they went to the town of Newmarket and did their audit, they wouldn't need to audit it again for maybe two or three years. It could go on a rotational basis. The six auditors would rotate around the nine municipalities plus the region. I picked six auditors; it could be four auditors.

**Mrs. Van Bommel:** Would there be a complaint mechanism as well so that it could be complaint-driven?

**Mr. Yorston:** That's what I said here. There should be a complaint mechanism. Say if an association such as ourselves have come across wrongdoing and incompetence, we want a channel of communication to someone who's going to do something about it. We don't have that channel under the present system, in my opinion.

**Mrs. Van Bommel:** And you don't feel that you'd be able to complain to the municipality and they would be responsive to you?

**Mr. Yorston:** We did respond to the municipality, we did write them, and we got a gobbledygook answer. I've got all of the details here, actually. We did ask them and we did go through that process. We gave up and then went through the Ministry of Municipal Affairs and were told to take legal action.

Just remember, we are a crowd of old retirees here. We're not going to go to court carrying our money to sue the town, which will defend itself with our money. There must be another means so that democracy can work. And democracy is not working, because at the federal and provincial levels you have opposition parties and an Auditor General to help keep the government of the day honest; you don't have that at the municipal level.

**The Chair:** Thank you very much for being here.

### SHOPPERS DRUG MART

**The Chair:** Our next delegation is Shoppers Drug Mart, Barbara Dawson and Rob White. Thank you for coming today. We have your submission in front of us. If before you speak you can identify yourself and the organization you speak for, you will have 15 minutes. Should you leave time at the end, we will be able to ask you questions.

**Ms. Barbara Dawson:** Good afternoon. My name is Barbara Dawson and I am vice-president of corporate affairs at Shoppers Drug Mart. With me today is Rob White, our Ontario district manager responsible for Shoppers Drug Mart pharmacy locations in Durham, and this includes the area of Pickering to Oshawa, Port Perry, Uxbridge and parts of Markham.

Madam Chair and distinguished members of the committee, Shoppers Drug Mart appreciates the opportunity to speak to the standing committee on general government considering Bill 130, the Municipal Statute Law Amendment Act.

Our comments today are limited to those provisions in the bill that will affect the regulation of store hours in the

province. These are the provisions in the bill which, when read together, would grant municipalities powers to require business establishments to be closed at any time, and would exempt or override the application of the Retail Business Holidays Act, the RBHA, to the municipalities—this is Bill 130, schedule A, section 79, and schedule D, section 15.

The written submission before you goes into greater detail than I am going to provide in my summary comments this afternoon, as we wanted to quickly outline the issue and leave time for questions.

Our concern with Bill 130 stems from an outdated provision in the Retail Business Holiday Act, the RBHA, that allows only pharmacies with less than 7,500 square feet of selling space to remain open on the eight public holidays of the year.

As you are probably aware, on the eight named public holidays, for example, New Year's Day, Christmas Day, Victoria Day etc., the RBHA prohibits retail establishments from being open unless they fall within one of the exemptions. Those exemptions include small stores, pharmacies, special services, art galleries etc. As you can imagine, as one of Canada's leading retail pharmacies, we fall under the pharmacy exemption, which permits pharmacies to open on public holidays, and as the statute specifically states, where "the principal business of the pharmacy is the sale of goods of a pharmaceutical or therapeutic nature or for hygienic or cosmetic purposes" for "dispensing of drugs ... available to the public during business hours," and where "the total area used for serving the public or for selling or displaying to the public in the establishment is less than 7,500 square feet."

While the first two criteria remain relevant in describing the pharmacy exemption, today the square-foot restriction is no longer relevant. In 1989, a 7,500-square-foot limitation may have made sense; however, today, because of many factors, pharmacies are much larger. As an example, the average size of our pharmacies today is about 13,000 square feet. So in today's environment this restriction actually means that about one half of our Shoppers stores must remain closed on public holidays. Please remember that many of these stores are located in centres, towns and villages where they are the only pharmacy alternative. As a result, this square-footage limitation prevents many of the citizens of Ontario from having access to prescription drugs and over-the-counter medications that they require on these eight days of holidays. So, while the 7,500-square-foot limitation is problematic, at least overall the RBHA recognizes the provincial interest in having pharmacies available to the public on these holidays.

Unfortunately, Bill 130, and Bill 53 before it, negates this provincial interest. Bill 130 devolves the power to set retail hours—24 hours a day, 365 days of the year—to municipalities, which, when put into effect, will mean that municipalities will be able to override the provincial RBHA with their own bylaws.



1730

Shoppers Drug Mart currently has 509 stores in Ontario and together they account for 52% of our entire national pharmacy network. These stores, as I've mentioned previously, are not only located in large urban centres like Toronto, they are also present in many smaller towns and villages of this province. As such, our pharmacies are an integral part of the health care delivery system in this province. Because of that, the impact of this legislation on our business and on the citizens of the province is significant.

To provide you with a view of that impact, I would like to read several excerpts from a letter submitted by a city of London Shoppers Drug Mart associate. Her name is Carolee Coulter and we have included her letter in the written submission. You'll find it as an appendix. Carolee's pharmacy is located near a very busy walk-in clinic that is open on holidays, but because of the size of Carolee's pharmacy, she is not allowed to be open; she is required to be closed. I quote:

"As my store is currently over the 7,500 square foot restriction I cannot legally open on statutory holidays, which is putting my patients at a great health care disservice. My colleagues and I have had many discussions with our city councillors to try to come up with a solution for our municipality. Unfortunately, the issues have not been addressed as our municipality views health care issues as provincial responsibilities.

"Our community is currently underserved with family physicians and therefore many people are relying on emergency rooms, walk-in clinics and pharmacies for their health care needs. My store has two walk-in clinics in close proximity which choose to open on statutory holidays. Unfortunately, anyone given a prescription has to travel out of their way to have their health care needs taken care of. This is a huge inconvenience, especially when someone is ill.

"As we all know, illnesses, wounds, and pain can happen at any time—not just in 'regular' business hours. My store is open from 8 a.m. to midnight to help accommodate as many needs as possible. My pharmacists and I deal with many health care questions on a daily basis, including referrals from Telehealth Ontario. These questions don't stop for holidays."

It is for the reasons Carolee has outlined in her letter and the others I have touched upon previously that Shoppers strongly believes the legislation, as currently drafted, will have several unintended consequences.

Today Ontarians have the certainty of knowing they have access to a pharmacy to have their prescriptions filled, their over-the-counter medication needs dispensed and other health related needs met 365 days of the year, regardless of where they happen to live. By transferring these powers to the municipalities, this certainty will be lost.

In addition, the province could be left with a situation where some communities have full access to pharmacies every day of the year while others have much more limited access. As a consequence, there could be follow-

on pressures on other parts of the health care system. And where communities pass more restrictive bylaws, Ontarians could face a situation where they have even less access to pharmacy services.

Finally, the Minister of Health and indeed the Premier maintain that improving health care is a provincial interest and that pharmacy is an important provider of health care services. Quite frankly, not only is Bill 130 inconsistent with this stated direction, but it also prevents Shoppers Drug Mart, as a pharmacy, from delivering on this very accountability to both the government and the people of the province.

As a result, Shoppers would like to recommend that Bill 130 be amended so that the responsibility for the setting of pharmacy hours remains with the province and, specifically, that the square footage limitation of 7,500 square feet in the RBHA is removed.

With these amendments, we believe the interests of Ontarians will be met, as they support what the government has been and is doing to improve access to health care services across the province, and it also enables us, as a pharmacy, to deliver this health care service for Ontario.

Before closing, I would like to provide you with two verbatim quotes from an open-ended customer comment that we received on this particular topic. The first comes from Kitchener-Waterloo: "Great that it is a 24-hour service. Our city really needed that (I am an emergency RN and it is great to be able to tell patients where they can go to get their prescriptions filled during the night or on holidays)."

The second is from London: "I went in at 2:30 a.m., after spending the previous six hours in the hospital emergency department. I have many of my prescriptions at this Shoppers, however, it was a first for my daughter. I needed to fill out a prescription for a painkiller and antibiotics."

Of the more than 30 million prescriptions Ontarians entrusted to Shoppers last year, more than 500,000 of those scrips were filled in Ontario on eight statutory holidays. This is obvious evidence that illness and need do not take a holiday. As providers of health care services, pharmacies should be allowed to fulfill their mandate without restriction, like other health care providers.

Our written submission continues with answers to some of the questions we think the committee members may have, but I would like to stop here and take any questions in the time remaining.

**The Chair:** Just over a minute for each party, beginning with Mr. Prue.

**Mr. Prue:** You've made a very compelling case, but I can see what another part of the argument may be and I'd just like you to respond to it. The Shoppers Drug Marts in my community—and we have two; you can see them from each other, that's how close they are together. They're huge and they sell a lot more than the drugstore. One has a post office; they sell clothes; they sell literally almost everything—groceries. I can agree with keeping the pharmacy open for health care, for all the reasons



you've said. But we force The Bay and Dominion and those selling the same products to close. Would you see a compromise of leaving the drugstore portion open, as opposed to the enormous store, which is, to be fair, a lot more not drugs than drugs?

**Ms. Dawson:** A fair question. We are rooted in pharmacy. It is the majority of our business and it also accounts for the majority of our sales. So as a provider of those health care services, we deem that it would be important and fair to be available to patients and customers who need that. Much of the store area that is outside of pharmacy also includes other OTC medications. So when you really take a look at the footprint, the majority of the store is still dedicated to health care.

**Mr. Duguid:** I listened carefully to your comments and had an opportunity prior to coming into committee today to chat with you in a little bit more detail, and I appreciate that. I guess in listening further to your brief, under the bill, unlike the status quo—this would be my understanding; I'm going to ask you to confirm that—municipalities do have the ability now to allow stores like a Shoppers Drug Mart to open beyond the limitations. If this legislation passes, municipalities will now have that ability, which could mean that in some communities where they couldn't have opened under the Retail Business Holidays Act before, they may now be allowed to open, if the municipality chooses. Is that correct or do I have it wrong?

**Ms. Dawson:** I believe that's correct, but the whole idea that the decision is left with the municipality means that we could well be facing a patchwork of accessibility, because that's in essence what it all boils down to. So one municipality could choose to be very restrictive whilst another could be very open.

**Mr. Duguid:** Right. The municipalities would have to choose what's best in terms of their public interest, in their opinion, and sometimes—you're right—that could vary from community to community.

**Ms. Dawson:** And it's interesting because, building on the point that you're making with regard to municipalities, we have met with many municipalities and tried to put this forward, and they do not see this area as an area of their concern. They see health care and access to health care and health care services as a provincial matter, so they don't understand why they should be involved or why it would be of interest.

1740

**Mr. Hardeman:** Thank you very much for the presentation. First of all, I want to say that I would agree with the removal of the 7,500 square feet. To me, a store is a store, and if it has purpose to be open, it shouldn't matter how many square feet there are in it. I think a definition of the primary purpose of the store does make some sense.

I have some concern, though. It would seem to me that if municipalities are presently saying, "It's a provincial issue, it's a health care issue, so we will not let you open," that argument would be eliminated by this bill, would it not, to say, "You may be serving health care

needs, but you as a municipality get to decide whether that store is going to be open on behalf of your people or not"? It would seem to me that that would really put the onus on municipalities to make a decision on what was in their best interests, and if it's in the best interests of all the good folks who are shopping there, would that not drive municipalities to make better decisions than the provincial government?

**Ms. Dawson:** I believe it's a situation where they won't know what they don't know, so they would have to be met with and educated on the fact that this is even something that would be within their interests. When you look at the whole idea, the whole notion, of health care accessibility and the ability to have access to medication etc, the very fact that we would have to go out to 47 major municipalities and have that ongoing conversation is something that's really quite overwhelming. And that's only to assure a consistency, a floor, if you will.

**Mr. Hardeman:** Thank you.

**The Chair:** Thank you very much for being here today.

#### CITY OF OSHAWA

**The Chair:** Our next delegation is the corporation of the city of Oshawa. Welcome. Make yourself comfortable. Thank you for your patience. We appreciate your being here today. If you could state your name and the group that you speak for.

I want to just alert you and the next delegation that I have been told there will be a vote at 10 to 6, and if you hear bells, I'll explain what we're going to do next, but it's not because of anything you've said. I don't want you to be alarmed in the course of your presentation. It won't affect the time that you have.

**Mr. David Potts:** It wouldn't be the first time, Madam Chair.

Thank you for the opportunity. My name is David Potts. I'm the director of legal services for the city of Oshawa. I have with me my colleague Jerry Conlin. He's the acting director of municipal law enforcement and licensing services for the city of Oshawa.

I've separately had an opportunity to contribute to a written submission on behalf of the Municipal Law Departments Association of Ontario. Next week I'll be appearing with one of my colleagues on behalf of the Ontario Bar Association. But today Mr. Conlin and I appear on behalf of the council for the corporation of the city of Oshawa.

Again, we appreciate this opportunity to make a recommendation with respect to one aspect of this important legislative initiative, and that is the power to impose administrative penalties. Of course, the committee has our written submission.

The following recommendation is consistent with a recommendation by the Municipal Law Departments Association of Ontario, and the recommendation is this: It is recommended that part XIV of the Municipal Act be amended to include a general power to impose admin-



istrative penalties in addition to the specific administrative penalty powers currently proposed by Bill 130 respecting the enforcement of parking and licensing bylaws.

Following are seven material elements of an administrative penalty power that would protect the rights of individuals while providing an efficient alternative to the traditional prosecutorial process in certain circumstances.

First, and this is probably the most important part, along with the second element: An administrative penalty power should be integrated as part of the proposed “Orders and Remedial Actions” powers, such that an administrative penalty would be available where a person defaults in complying with a municipal administrative order that an activity be discontinued or that work be done.

Second, the underlying administrative order could include a notice of the administrative penalty as one of the means by which the order may be enforced. Any review process related to the underlying administrative order could also serve as the process by which the person against whom or which the penalty is imposed could be heard and the penalty could be confirmed or reduced.

Third, limits could be imposed on the power in terms of the amount of the penalty and the frequency with which it may be imposed during a period of non-compliance.

Fourth, the power should be expressed as being in addition to any other remedy and to any penalty imposed by the bylaw. However, where an administrative penalty has been imposed and has been paid in accordance with the notice of the penalty, the person should not be liable to be charged with an offence in respect of the specific contravention.

Fifth, the power should be subject to a limitation period which commences on the earliest date expressed in the administrative order for compliance.

Sixth, in order to enforce the payment of an administrative penalty, a municipality should have the power to add the penalty to the tax roll of any property within the municipality owned by the person(s) against whom or which the penalty was imposed and to collect the penalty in the same manner as property taxes with priority lien status.

Seventh, the Building Code Act, the Fire Protection and Prevention Act and the Planning Act should be similarly amended—that’s perhaps a discussion for a different day.

The following comments better explain this recommendation and its elements.

The law governing municipal government in Ontario continues to undergo significant change. Until recently, all Ontario municipalities were generally governed under the authority set out in the Municipal Act.

On June 12, 2006, the Stronger City of Toronto for a Stronger Ontario Act, 2006, was given royal assent. Included in its schedule A was the City of Toronto Act, 2006, which provides the city of Toronto with a broad legislative framework and increased freedoms, recog-

nizing Toronto’s unique status among Ontario municipalities.

Three days later, on June 15, 2006, Bill 130 was introduced for first reading in the Ontario Legislature. Bill 130 proposes a number of significant amendments to the Municipal Act, as well as changes to a number of other related statutes.

The explanatory note to Bill 130 notes that many of the amendments to the Municipal Act proposed by Bill 130 address the same subject matter currently existing in the statute, but change the amended provisions to reflect a new approach wherein municipalities are granted broader authority and new permissive responsibilities. For the most part, the changes in schedule A of Bill 130 parallel the approach adopted in the City of Toronto Act, 2006.

One of the changes introduced by the City of Toronto Act, 2006, and proposed by Bill 130 in its current form is the power to impose administrative penalties as a means of enforcing business licensing bylaws and bylaws respecting the parking, standing or stopping of vehicles.

This submission recommends a general power to impose administrative penalties in addition to the specific powers currently proposed by Bill 130 to impose administrative penalties respecting the enforcement of parking and licensing bylaws. Again, a key component of the recommendation is that a person upon whom an administrative penalty is to be imposed should be afforded a right to be heard by a tribunal that would have the power to reduce the administrative penalty.

To this end, a general administrative penalty power could dovetail with an administrative order process, which itself usually affords an opportunity to be heard respecting the technical merits of the administrative order. In fact, the existence of a right of appeal against an administrative order is considered so important that a person who enjoys this right of appeal is often prevented from challenging the administrative order in any subsequent prosecution for non-compliance with the order. The footnote to the written submission provides some authority for that statement. Likewise, an administrative penalty should be considered less controversial where the person is notified of the person’s right to be heard respecting the administrative penalty and is afforded an opportunity to have the penalty reduced.

A modest administrative penalty may, in some circumstances, be an appropriate alternative means of achieving compliance with an administrative order, particularly when one considers a municipality’s existing powers to achieve compliance.

#### 1750

Municipalities enjoy broad powers to make and enforce administrative orders. In addition to specific administrative order-making powers, the current version of the Municipal Act provides that a bylaw passed under one of the “spheres of jurisdiction” respecting a matter may regulate or prohibit respecting the matter, and, as part of the power to regulate or prohibit respecting the matter, require persons to do things respecting the matter.



The existing Municipal Act permits a municipality to undertake remedial action as one means of enforcing its administrative orders. Specifically, a municipality that has authority to direct or require that a matter or thing be done (1) may direct that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense; (2) may enter upon land and into structures at any reasonable time; (3) may recover the costs of doing the thing, including adding the costs to the tax roll and collecting them in the same manner as taxes—footnote 9 in the written submission provides further details of the extensive costs that can be incurred; and (4) is not required to provide compensation as a result of doing the remedial work.

The exercise of the municipal remedial action power requires the municipality to incur the costs, which can be substantial, as noted, and which ultimately may be recovered from the individual without a hearing. These are existing powers proposed to be continued under Bill 130. Accordingly, a modest administrative penalty may, in some circumstances, be a reasonable alternative that encourages compliance without the risk of substantial costs.

Similarly, the existing power to license, regulate and govern a business—it's important to note that Bill 130 proposes administrative penalty powers for business licensing; that's welcome—includes the power to revoke a licence. The revocation of a municipal licence can be devastating to the licensee's business. Accordingly, a modest administrative penalty may encourage compliance with the municipality's system of licences in circumstances where the revocation of the licence is considered too extreme.

Finally, punishment by means of prosecution is the traditional means of encouraging compliance with municipal bylaws. Bill 130 proposes to increase significantly the maximum fines that may be imposed upon conviction of offences for failing to comply with municipal bylaws. Imprisonment continues to be a penalty that may be imposed for certain contraventions of municipal bylaws. A modest administrative penalty may, in some circumstances, be a reasonable alternative to punishment by prosecution.

Further, the perpetual shortage of justices of the peace continues to inhibit enforcement of municipal bylaws. The disturbing consequences of this shortage were expressed by the Association of Municipal Managers, Clerks and Treasurers of Ontario in its September submission to the standing committee on justice policy respecting Bill 14:

"[P]ublic confidence in the administration of justice is being eroded. Some citizens have learned that it is possible to get away with breaking society's rules and laws by simply exercising their right to request a trial. This is because sittings of POA courts are being reduced to the point that matters are being dismissed because they cannot be heard within an acceptable amount of time. The result is that these citizens are more likely to break

the rules again, while a sense of unfairness grows among those citizens who respect the law."

**The Chair:** Mr. Potts, how much more of your deputation do you have?

**Mr. Potts:** One minute.

**The Chair:** I cannot see how long members have to go and vote. You technically have five minutes left in your deputation. So I'm going to recess—

*Interjection.*

**The Chair:** Oh, we have eight minutes. How about you finish and then we'll come back and ask you questions. You have time, and we have time to get back.

**Mr. Potts:** The Access to Justice Act proposes to improve the appointments process for justices of the peace, which is one important step toward properly resourced courts. However, the question remains as to whether all manner of enforcement should proceed by way of the traditional prosecutorial process. Bill 130 heralds a fresh approach by recognizing administrative penalties as an appropriate alternative to the traditional prosecutorial process for the enforcement of parking and business licensing matters. The recommendation in this submission flows from and complements this important policy initiative.

To conclude, the use of administrative penalties as a means of enforcing municipal bylaws is no longer a novel concept. Bill 130 currently proposes administrative penalties as a tool to enforce parking and business licensing bylaws.

It is recommended that part XIV of the Municipal Act be amended to include a general power to impose administrative penalties in addition to those currently proposed by Bill 130, subject to reasonable limits on the power as suggested in this submission. This submission is, of course, consistent with the recommendations of the Municipal Law Departments Association of Ontario.

Again, on behalf of council and my colleague Mr. Conlin, thank you for the opportunity to make this submission.

**The Chair:** You've got three minutes left. We'll get to your questions. Each member of the committee will get one minute to ask you a question.

We'll recess for the vote.

*The committee recessed from 1755 to 1807.*

**The Chair:** Committee, we resume our hearings. We have three minutes left, beginning with Mr. Duguid.

**Mr. Duguid:** Madam Chair, in light of the fact that the next deputant has to catch a train—a very good deputation. I thank you for it. We'll take a very close look at that. As a former municipal councillor, I think I understand what you're getting at. So we appreciate it.

**The Chair:** Mr. Hardeman?

**Mr. Hardeman:** Thank you very much. I want to congratulate you on the presentation. It's the first one that, after the presentation, I have no idea what it was about. I say that with tongue in cheek.

I just quickly want to ask: In principle, what's the problem with administrative fees being added onto all the



other charges, giving you just a free rein of it? My people at home—why would they object to that?

**Mr. Potts:** Being a lawyer, lawyers are wired to instinctively be offended by the concept of an administrative penalty which does not involve a judicial process. The manager in me and the manager in Mr. Conlin actually oversee the front line of enforcement—in my case, overseeing prosecutions for the city of Oshawa, occasionally myself appearing in court, seeing the process and seeing the number of different kinds of matters, the subject of enforcement and recognizing that one tool, specifically the punishment-by-means-of-prosecution tool, is not the tool that serves all purposes. The administrative order concept—that is, where you have people in the field who give a notice that says, “Do this work and you’ve got a certain amount of time to do it, and if you don’t do it, then we will prosecute you”—whether it’s fire services matters, building code matters or, in this case, municipal bylaw matters, the collective experience is that most people comply. That’s why the reference to dovetailing an administrative penalty power as part of an administrative order process was made in the submission, and the reason is, what concerns people about administrative penalties is the opportunity to be heard. They want their day in court, although in this case maybe it’s not a court in the traditional sense, but it’s an opportunity to appear before a group who can hear what the concern was and reduce the penalty.

The example in the footnote—I believe it’s footnote number 4 in the submission—is with respect to a property standards committee established under the Building Code Act, appointed by municipal council, which is arm’s length from the council because its term is consistent with the term of the municipal council, and they can do anything to the order that comes before them. This similarly constituted committee could have the power to do anything with respect to the administrative penalty that comes before it.

**Mr. Prue:** In this way, it would be no different than someone getting a parking enforcement ticket. You could either choose to go to court and ask for it to be gotten rid of or reduced, or you could just say, “I deserve the ticket,” and pay it. What you’re suggesting here is no different than that.

**Mr. Potts:** Actually, it’s no different. In fact, the current version of Bill 130 supports this submission because parking has been carved out and business licensing as well. So the significant policy decision has already been made by the drafters of the first reading version of the bill.

**The Chair:** Thank you very much for being here today. We appreciate your patience.

COUNTY OF MIDDLESEX;  
WESTERN ONTARIO WARDENS’ CAUCUS

**The Chair:** Our last delegation for the day is the county of Middlesex/Western Ontario Wardens’ Caucus. We saved the best for last. Thank you very much for

being here. If you’re both going to speak, introduce yourselves and the group that you speak for. You’ll have 15 minutes. If you leave time, there’ll be an opportunity for us to ask questions.

**Ms. Joanne Vanderheyden:** Thank you very much. My name is Joanne Vanderheyden. I’m warden of Middlesex county. I have with me our CAO, Bill Rayburn. We have a submission here on behalf of the Western Ontario Wardens’ Caucus.

I want to begin by thanking you for the opportunity to meet with you today. As you know, the Municipal Act is a vitally important piece of legislation to the citizens of Ontario and the municipalities where these citizens live. I applaud the government for taking the time to make sure that Bill 130 receives appropriate constructive criticism so that collectively we can develop a Municipal Act that will serve us well for many years to come.

I also want to applaud the government for working hard to enshrine municipalities with the powers that they require to be a true governmental partner in the delivery of services to our citizens. Municipalities have worked hard over the years to ensure that they are a responsible and respected order of government. The spirit of Bill 130 reflects the province’s commitment to recognizing municipalities as an order of government.

With this in mind, we are supportive of the position put forward by AMO last week. Local government should be given the flexibility and authority to legislate as mature orders of government for the matters within their jurisdiction. Retrospective provincial intervention is contrary to the spirit of many of the other changes in the act. There is no need to micromanage local government and, where there is a provincial interest to be protected, it should be clearly articulated in the bill.

Finally, I want to thank the province of Ontario for consistently reviewing the Municipal Act. I recall a conversation during the development of Bill 111, the 2001 Municipal Act, where I stated to a provincial official that the bill was far from perfect. His response was that it was an improvement and that the Municipal Act will continue to evolve over time. This version of the Municipal Act is part of that evolution. It is also a recognition that the needs of our citizens change, the requirements for municipalities change and the appropriate legislation must change as well.

Despite the best efforts of those who drafted the legislation, there are a few sections of Bill 130 that are detrimental to the autonomous management of municipalities. As you are aware, I have asked to speak on behalf of the Western Ontario Wardens’ Caucus today in an effort to bring to you an issue that is of significant concern to them.

When the province of Ontario amended the legislation governing the term of office for municipal councils, there was an unintended consequence. The act currently provides the opportunity for wardens to be elected for either a one-year term or the term of office for council. During the three-year term, that meant that wardens were either elected for a one-year term or a three-year term.



With the move to a four-year term, some municipalities believe that a four-year term for a warden may be too long. As a result, they would like to take the opportunity to have a warden for two two-year terms. With this in mind, I am respectfully requesting that you give consideration to amending Bill 130 to allow the term of office for the warden to be at the discretion of county council with no predeterminations of term length made in the Municipal Act.

I first drew this matter to the attention of the Minister of Municipal Affairs in early 2006. In response to my letter, the minister notified me that the most appropriate forum to present this concern was in front of this committee. Therefore, on behalf of the Western Ontario Wardens' Caucus, I respectfully request that you make this small change to the act.

I would be remiss if I did not also provide you with my thoughts on the new investigation provisions in the act. The new investigation provisions enable any citizen to direct a municipal ombudsman or an investigator appointed under section 239.2 to investigate alleged violations of that municipality's procedure bylaw.

While I am a firm believer in governmental accountability, I would ask you to consider the costs associated with the proposal for a municipal ombudsman. The provisions as they stand now are very open-ended. As a result, I am concerned that the provision for investigation will be misused by some, perhaps not even by citizens of the municipality in question, to carry out frivolous and malicious claims. The result of this type of open-ended opportunity will undoubtedly be a clogging of the municipal decision-making process, with deep financial impact.

As I mentioned earlier, I believe in accountability, but not accountability at all costs. The rules for when these procedures can be used must have a threshold and that threshold should be high if we are to protect the ability of municipalities to act in a reasonable and businesslike manner.

In closing, I want to draw your attention to the emergency management section of the Municipal Act. Last month, the Ontario Association of Emergency Managers developed a number of amendments to Bill 130. Specifically, they have asked for a new series of clauses that define "emergency services" and "incident commander." They have also added clauses that assist in clarifying powers during an emergency, emergency declarations, offences and penalties, and mutual aid.

I have reviewed each one of these proposed clauses and I want to encourage you to do the same as I believe that they are important additions to Bill 130 that will help to clarify roles and responsibilities in emergency situations. For your review, I have attached a copy of the proposed clauses.

Once again, thank you for this opportunity today. I look forward to any questions that you may have in regard to this submission.

**The Chair:** Thank you very much. You've left about three minutes for every party to ask questions, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. On the issue of the election of wardens, prior to a number of years ago, it was always a one-year term and a warden could run again for a second term. When the act was changed, my understanding is that you could stay with the old system of one year or you could elect them for the term of office, recognizing that that would stop this thing about having to change wardens too often.

Since you can still do it one year at a time—one, two or three, but you have to have the election three times—does that not solve the problem and still allow you to say that it's not for a two-year term; it is for the term of office?

**Ms. Vanderheyden:** It's our understanding that you can have either one or the term of office. We at Middlesex have one-year terms, so we're good to go. But there are municipalities out there that have specified the entire term of office, and the entire term of office now is four years and that's sometimes too long. So they would like the ability to say, "Don't put a number on it; just say you could have it at your discretion."

**Mr. Bill Rayburn:** If your point is in regard to one term being turned over and over again to make two in that process, you know from your past experience that there is machinery that goes along with those elections and there are expenses that go along with those elections. But more importantly, for some municipalities that are looking for the opportunity to have two two-year terms, there is an investment, so to speak, in raising the profile of a warden. You can't make that investment if you're not sure if that warden is going to be there for two years. This would allow you the mechanism. The added flexibility does no detriment. I would turn the question around: What harm would it do to have the opportunity to have two years and state it in your own procedural bylaws so there's certainty?

**Mr. Hardeman:** I didn't hear any great concern from the municipal people when it was changed from three to four years for the term of office. There was no concern about that being too long. It would seem to me that when they then go to the council meeting, that extension of one year—there's no reason to assume that that's different for the warden than it was for any other member of council. They, without any consultation, without any concern for the system, all agreed that four years was okay to replace the three in a budget bill, and yet now the councillors are saying, "That was okay for us, but now when we are the people doing the electing, we want to be able to change them and put different terms of office. Four years may be too long to have a warden."

**Mr. Rayburn:** It may be, and that's the problem. That's the problem we're trying to point out, that our hands are tied and that we only have one or four. I think you'll recognize as well that there's a difference between being a councillor and being a warden. One of the goals that we try to accomplish during the term of a warden is to raise the profile of the warden so they can represent the community. With the one-year turnover, that's really difficult to do. There are councils out there that say, "The

perfect balance for us, for our particular community, because of our size or because of our history or because of our geographical representation, is to have these two two-year terms." That flexibility is something that would really benefit them.

**Mr. Prue:** I'm mindful of your train. I don't want you to be stuck here. Would you like me to ask the question or do you want to go?

**Ms. Vanderheyden:** You're good. Go ahead.

**Mr. Prue:** Are you sure? Okay, I only have one question and—

**Mr. Rayburn:** Can we decide after you ask it?

**Ms. Vanderheyden:** Can I slap the question around if I don't like it?

**Mr. Prue:** —it's the cost of the municipal ombudsman. We know, and this has been raised in the Legislature, a city like Toronto or Ottawa can afford a municipal ombudsman. Smaller towns and counties are going to have a great deal of difficulty. In your county, to pay someone to be an ombudsman, even just one person, would be a huge cost that you would not want to pay. Am I correct?

**Ms. Vanderheyden:** That's correct.

**Mr. Prue:** So you would prefer not to have this provision or to have it that you had the option of either appointing one or not at your discretion.

**Mr. Rayburn:** Can I add to your question? You're saying, yes, there's this cost of actually hiring the person. We're forgetting about the fact that if, for example, in the county of Middlesex the situation arose where we had to have an ombudsman, we would likely go out and hire a lawyer to act as that ombudsman, as you would expect. That person not only starts to bill on day one of the first requirement, they start their bill on the days of training to be an ombudsman, because a lawyer is not going to know what the rules are around this. There's a whole lead-up administratively to this where I can see the bill being rather large.

In our county, we have eight municipalities. They're all going to have to have ombudsmen. The upper tier is

going to have to have an ombudsman. When you start looking across the county of Middlesex at what this is going to cost, at what benefit, we wonder.

**Mr. Prue:** Okay, thank you.

**Mr. Duguid:** Just two very, very quick questions. The first is just to clarify your previous response. So you're in favour of the permissive approach in terms of the province? Does that clarify it?

**Mr. Rayburn:** In terms of the ombudsman?

**Mr. Duguid:** In terms of the ombudsman and the other statutory officers.

**Mr. Rayburn:** Right. I think if it's an option, something that municipalities can choose to do and may need to do, that would be fine.

**Mr. Duguid:** Okay. Just quickly because I know you've got to run, we are looking very seriously at the concern that you've raised with regard to the wardens and the appointment of the wardens. I can't give any commitments here at committee at this point in time, but we're looking very seriously at that. You've made a very valid argument.

**Mr. Rayburn:** Thank you.

**Ms. Vanderheyden:** Thank you.

**Mrs. Van Bommel:** I just want to say thank you very much for coming to Toronto. The warden is a constituent of mine and Mr. Rayburn is the administrator for the county I live in. I know in my area and certainly in most of rural Ontario, the issue of wardens and warden terms is very controversial. Thank you very much for bringing it to our attention.

**Ms. Vanderheyden:** Thank you, and if we miss the train, we'll come back and you can drive us home because you know where we live.

**Mrs. Van Bommel:** Yes.

**The Chair:** I'm not sure she's going home right now, but thank you very much for your deputation. We appreciate your being here today.

Committee, we now stand adjourned until 4 p.m. on Monday, November 27.

*The committee adjourned at 1823.*



## CONTENTS

Wednesday 22 November 2006

<b>Municipal Statute Law Amendment Act, 2006, Bill 130, <i>Mr. Gerretsen</i> / <b>Loi de 2006 modifiant des lois concernant les municipalités, projet de loi 130, <i>M. Gerretsen</i></b> .....</b>	G-909
Ontario Waste Management Association .....	G-909
Mr. Rob Cook	
City of Mississauga .....	G-911
Ms. Hazel McCallion	
Ms. Mary Ellen Bench	
Association of Municipal Managers, Clerks and Treasurers of Ontario .....	G-914
Ms. Kathy Coulthart-Dewey	
City of Windsor .....	G-916
Mr. John Skorobohacz	
Newmarket Taxpayers Association .....	G-919
Mr. Ray Yorston	
Shoppers Drug Mart .....	G-922
Ms. Barbara Dawson	
City of Oshawa .....	G-924
Mr. David Potts	
County of Middlesex; Western Ontario Wardens' Caucus .....	G-927
Ms. Joanne Vanderheyden	
Mr. Bill Rayburn	

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### Chair / Présidente

Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)

#### Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)  
Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)  
Mr. Kevin Daniel Flynn (Oakville L)  
Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)  
Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell L)  
Mr. Jerry J. Ouellette (Oshawa PC)  
Mr. Lou Rinaldi (Northumberland L)  
Mr. Peter Tabuns (Toronto–Danforth ND)  
Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### Substitutions / Membres remplaçants

Mr. Wayne Arthurs (Pickering–Ajax–Uxbridge L)  
Mr. Ernie Hardeman (Oxford PC)  
Mr. Michael Prue (Beaches–East-York / Beaches–York-Est ND)  
Mr. Shafiq Qadri (Etobicoke North / Etobicoke-Nord L)  
Mrs. Maria Van Bommel (Lambton–Kent–Middlesex L)

#### Clerk / Greffière

Ms. Susan Sourial

#### Staff / Personnel

Mr. Jerry Richmond, research officer, Research and Information Services

16  
13

Publication

G-39



G-39

ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 27 November 2006

# Journal des débats (Hansard)

Lundi 27 novembre 2006

## Standing committee on general government

Municipal Statute Law  
Amendment Act, 2006

## Comité permanent des affaires gouvernementales

Loi de 2006 modifiant des lois  
concernant les municipalités

Chair: Linda Jeffrey  
Clerk: Susan Sourial

Présidente : Linda Jeffrey  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 27 November 2006

Lundi 27 novembre 2006

*The committee met at 1600 in room 151.*MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT DES LOIS  
CONCERNANT LES MUNICIPALITÉS

Consideration of Bill 130, An Act to amend various Acts in relation to municipalities / Projet de loi 130, Loi modifiant diverses lois en ce qui concerne les municipalités.

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The standing committee on general government is called to order. We're here today to continue public hearings on Bill 130, An Act to amend various Acts in relation to municipalities.

I'd like to welcome our witnesses and tell them that they have 15 minutes to make their presentations.

ONTARIO FEDERATION  
OF AGRICULTURE

**The Chair:** Our first delegate today is the Ontario Federation of Agriculture. Welcome, gentlemen. Please make yourselves comfortable. If you need to pour yourself a glass of water, I think there are glasses up there. When you get yourself settled, if you could state your name and the organization that you speak for for the purposes of Hansard, and you'll have 15 minutes after that. If you leave time at the end, there'll be an opportunity for us to ask questions.

**Mr. Paul Misteale:** Thank you very much. My name is Paul Misteale, vice-president of the Ontario Federation of Agriculture.

**Mr. Peter Jeffery:** My name is Peter Jeffery, senior policy researcher, Ontario Federation of Agriculture.

**Mr. Misteale:** I certainly would like to thank you today for the opportunity to speak before the committee. We have a handout, of course. Everyone should have it in front of them, so I'm going to go from that. I'm just going to go through the first part of our recommendations. We want to focus on schedule D, section 20, the Line Fences Act. We don't want to get into the whole ball of wax, simply because we don't have time here today.

To begin, the Ontario Federation of Agriculture is the voice of Ontario's farmers. We have roughly 38,000

individual members and 30 affiliated organizations. We've been constituted in this present form since 1970. The organization is active at the local level through 49 county and regional federations of agriculture. The OFA is also a member of the Canadian Federation of Agriculture, the farmers' voice on national issues.

The Ontario Federation of Agriculture does welcome this opportunity to provide its comments on Bill 130. I'm going to go through our recommendations, a summary of which is found on page 2.

We recommend that section 20 of the Line Fences Act be retained as it is currently worded.

We recommend that the amendments to section 20 be reworded to clearly include rented farmland.

The OFA also recommends that the current methods of enforcement found in the Line Fences Act be expanded to include the fences along former railroad rights-of-way, taking into consideration that the owners of these former railroad rights-of-way are often municipalities themselves or other entities that do not pay municipal taxes. Furthermore, we are prepared to work with Ministry of Municipal Affairs and Housing staff and other stakeholders to develop an effective means to compel compliance with the section 20 fencing obligations.

We recommend that the fence-viewers be given the responsibility for deciding on the type of fence to be built along former railroad rights-of-way.

We also recommend that the Line Fences Act be amended to protect the right of property owners whose land is bisected by former railway rights-of-way to continue to be able to cross that right-of-way, whenever necessary, and without prior notice, for as long as their property is landlocked by virtue of the right-of-way cutting their land in two. This right must be transferable to every future owner of the property.

We also recommend amendments to provide that whoever acquires a former railroad right-of-way be obliged to establish an annual fencing budget that addresses both the construction of new fences as well as maintenance or repairs to existing fences.

We go into a fair bit of detail in the following pages. I'm not going to do that at this point in time. It goes into more explanation as to where we stand on these issues on the Line Fences Act. From page 5 on, we are also making comment on the rest of Bill 130. Some of the recommendations in there, again, because of time, we won't have an opportunity to get into in great detail. I would



rather have an opportunity to answer questions. If there are any questions in regard to this, Peter and I will try to field them.

**The Chair:** Okay. You've left almost four minutes per party, beginning with Mr. Hardeman.

**Mr. Ernie Hardeman (Oxford):** Thank you very much, Paul, for your presentation. I just quickly wanted to touch first of all on the Line Fences Act. We've had some discussion and we now have some information on the table here concerning the interpretation of what the new act is actually doing with the Line Fences Act. The previous delegation was under the impression that in fact there would be no municipal obligation under the present regime. With the changes, it would enforce or make municipalities fall under the Line Fences Act so that it was an added cost to municipalities. The researchers tell us that's not the case. But your proposal goes the other way from what the proposal is and wants to make the Line Fences Act more applicable to the railroad right-of-way. Is that right?

**Mr. Mistele:** Yes, we do. We don't really want anything to be changed, Mr. Hardeman. We say in our very first line that we feel very comfortable where the Line Fences Act is right now in regard to abandoned railroad rights-of-way. We have to remember that we don't want a patchwork of fences either, where we have this section that's fenced and this section that's not fenced. I sit on the Ontario trail strategy, and this is an issue around that simply because for the trespass act you can't take away where we are without other tools already put in place. The trespass act has long been overlooked and there hasn't been anything done in that regard. It's long overdue. And then there are the insurance issues.

**Mr. Hardeman:** I agree with you: To have the fence-viewers make the decision on where the fences are required and where they're not required makes more sense than legislating it by the present land use, because obviously land use can change from one year to the next.

In the areas where we have already seen the movement of ownership on the railroad rights-of-way, how are they dealing with the right to crossing it without notice? Is that being left in place, where the farmers continue to have that?

**Mr. Mistele:** I'll let Peter—Peter gets those phone calls in the office, whereas I don't.

**Mr. Jeffery:** It's a bit of a mixed bag. Some of the trail organizations that are running the trails are quite responsible in allowing the farmers to continue to cross the trail as needed. Others are taking the position that they have no obligation to allow crossing. That was something that was done with the railroad when they were operating the line, and for whatever reason they feel it died when the railroad sold its interest. We'd like to have some clarification that that right to cross carries on, because it's necessary to continue accessing parts of the farm.

**Mr. Hardeman:** Thank you. Another one—I'm just wondering here, looking through the licensing authority that municipalities will get through this act, and the suggestion that businesses already licensed under the

Agricultural Tile Drainage Installation Act would be exempt from that. What would be the difference between that and any other organization that was already licensed by the province? Is it your presentation that you think they should all be exempt from further municipal licensing, or should it just apply to the agriculture community?

**Mr. Jeffery:** We were simply focusing on either farm businesses themselves or the tile drainage contractors, and we felt that since they were already licensed by the province, duplicate licensing was unnecessary.

**Mr. Hardeman:** But wouldn't that be true of just about any organization where you have an accreditation process that's done by the province that says, "I'm an auctioneer and I have a licence as an associate in the auctioneer association"? Should they also be exempt, then?

**Mr. Jeffery:** We didn't pursue that angle.

**Mr. Mistele:** We felt that with the contractors, the contractors' main equipment, their contractors themselves are licensed and it's fairly rigorous. That's our understanding.

**The Chair:** Thank you. Mr. Prue.

**Mr. Michael Prue (Beaches-East York):** Okay, you're going to have to excuse this city boy when it comes to all this stuff.

I'd like to concentrate on your last point. Whoever acquires a former railway right-of-way—this would primarily be, I would think, either the conservation authority or a municipality. Is that who usually ends up with this?

**Mr. Mistele:** Actually, there's quite a mixed bag of ownership that ends up, and sometimes it's left in limbo; we're not exactly 100% sure.

**Mr. Prue:** Okay, but if it's a municipality or a conservation authority, who would obligate them to establish an annual fencing budget? Are you asking the province to tell them how to spend their money or how to set it in their budget?

1610

**Mr. Mistele:** We're asking that it should be part of the act that whoever is the owner of these properties have an obligation for maintenance, repairs and building of that fence. So yes, if a municipality is to be the owner and the municipality is using that right-of-way for whatever reason, it won't necessarily—there's a myriad of uses that these rights-of-ways can be used for, but they have an obligation to keep the fences in good repair.

**Mr. Prue:** I could understand if you had written that they be obliged to address the construction of new fences or do the maintenance and repairs, but you've been very specific here that they be "obligated to establish an annual fencing budget." When the province obligates a municipality or conservation authority, we say, "you shall"; we use those words: "You shall in your budget contain" whatever—a percentage, an amount of money, something to that effect. I don't know that we actually do that anywhere. I just want to know, is this what you intend, that we tell the county of Oxford—let's choose Oxford or Northumberland; I see all my colleagues



here—that we tell their county council or their municipality, “You will put \$1 million a year into fences along former railway rights-of-way”? Is that what you’re asking us to do?

**Mr. Mistele:** We’re asking that whoever is the owner or has control of rights-of-way have an obligation. So if it’s a municipality, they have that obligation, and that should be entrenched.

**Mr. Prue:** And the power to enforce that would be through the province?

**Mr. Mistele:** This is where we want to examine where we can get enforcement, because right now, we don’t have a mechanism of enforcement. This is where we’d like to explore different ways of making sure this gets done.

**Mr. Prue:** Those would be my questions, Madam Chair.

**The Chair:** Thank you. Mr Duguid?

**Mr. Brad Duguid (Scarborough Centre):** Thank you for taking the time to join us here today and for your input and written presentation. My first question is about the issue of rented farmland. You’ve expressed concerns that for some reason rental farmland may not be included under the definition of farmland in the Line Fences Act and in Bill 130. Could you explain to me what your basis is for that? I know that our ministry staff and our legal people are of the view that a farm business would include a rental use of the land as well; I think the term used is “farm business” in the act. Maybe you could try to extrapolate on that a little bit.

**Mr. Mistele:** I’ll let you go at that one.

**Mr. Jeffery:** We were seeking clarity that that would be the case, that there was no doubt that rented farmland would be included, because from time to time it changes hands from farmer to farmer over the course of the years. We wanted to make sure that there wasn’t something that fell through the cracks and allowed rented land to be excluded for some purpose.

**Mr. Duguid:** Okay. I hope I’ve been able to provide a little bit of clarity. The advice that I’ve been given from the ministry is that there’s no doubt in their minds at all that in fact rental farmland would be included, so it’s on the record here. I hope that gives you a little bit of ease. If there are any further questions on it, feel free, obviously, to contact me and we’ll see if we can get further clarification for you as well.

The second question I had was, you indicated that you’d like to work with the ministry to develop better compliance methods with regard to fencing obligations. Do you have any ideas that you are looking to put forward with regard to that? Right now, there’s the civil litigation opportunity. If somebody is not complying with the act, that’s where you’d go in terms of getting compliance. I’d be interested to know what other ideas you might have.

**Mr. Mistele:** Yes, you can use the stick or the carrot approach too here. We certainly want to build bridges. We want to work with people out there. I think education is a big component here, if we could get an education

component worked into making sure that people understand their obligations when they’re using a right-of-way. I’m thinking along the line of trails because I deal with trails more often than, say, pipelines or transmission lines on these rights-of-way. I think you’ve got the carrot approach.

As far as the stick approach, I guess a person would have to take a look, as was already pointed out by Mr. Prue over there. When you’re interacting with municipalities and the provincial government and private land-owners, you’ve got a three-way race. You’ve got to understand what all is available to you, as far as tools. We’re not at that point yet at OFA, but what we are saying is we’d certainly like, from the private land-owners’ and farmers’ perspective, to work with the other levels to make sure that we get it right.

**Mr. Duguid:** Thank you.

**The Chair:** Thank you, gentlemen, for being here today. We appreciate you coming.

#### AREND KERSTEN

**The Chair:** The next delegation is Arend Kersten. Welcome. Please make yourself comfortable. If you could state your name—I realize you’re not speaking for an organization, but if you could state that for Hansard. When you begin, you’ll have 15 minutes. If you leave some time at the end, we’ll be able to ask questions about your deputation, and we do have your presentation in front of us.

**Mr. Arend Kersten:** Thank you, Madam Chair. I’m new at this. Thank you for the opportunity to share some thoughts. My name is Arend Kersten. I’m a resident of Waterdown in the former town of Flamborough, part of the current provincial riding of Ancaster–Dundas–Flamborough–Aldershot.

Thank you for the opportunity to share some personal thoughts on the potential creation of community councils as you consider the new provincial Municipal Act.

I am currently the executive director of the 300-member Flamborough Chamber of Commerce and editor of BIZ magazine, a quarterly Town Media-Osprey publication distributed to over 20,000 business addresses in Hamilton–Wentworth and Halton.

I need to emphasize that what follows are my personal comments and do not in any way reflect the official or unofficial views of either Town Media or BIZ magazine. However, the executive committee of the board of directors of the Flamborough Chamber of Commerce at its meeting last Wednesday decided, without formally commenting on this lengthy preamble, to endorse the three specific recommendations detailed at the end of this presentation.

First, some context: For more than a dozen years, I was an award-winning reporter, editor and purposely provocative columnist with the Flamborough Review and Brabant Newspapers—the Dundas Star News, the Ancaster News, the Hamilton News, Mountain edition, and the Stoney Creek News. During my tenure, I was a



passionate champion of local democracy and an ardent opponent of municipal amalgamations, especially forced.

My claim to fame is that I survived four corporate takeovers while at the *Flamborough Review*, from the local Bosveld family to Southam to Hollinger to CanWest to Osprey. That all changed three weeks after Osprey sold the *Review* to Torstar, well known for its pro-megacity and pro-supercity positions, some three years ago.

I want to focus my comments on the concept of community councils. About a year ago, Hamilton Mayor Larry Di Ianni appointed me, along with over 20 others, as a founding member of the Flamborough advisory community council. I have learned much from that experience which I would like to share with you.

Before I get to my specific recommendations, it may be helpful and instructive to review the history of amalgamation in Flamborough and Hamilton-Wentworth, and this is something that I think particularly MPP Hardeman is very familiar with. When Hamilton councillor Terry Cooke decided to run for the position of regional chairman in 1994, the cornerstone of his campaign was the amalgamation of the city of Hamilton with its five suburban Hamilton-Wentworth neighbours—Ancaster, Dundas, Flamborough, Glanbrook and Stoney Creek. Considering the dire financial straits the former city of Hamilton was facing and the fact that Hamilton had double the population of the five suburban communities combined, Cooke's election was hardly surprising.

Shortly after Cooke's election as regional chairman, a handpicked constituent assembly was appointed to examine the issue of amalgamation. After a year of work, and despite howls of protest from the suburban Hamilton-Wentworth communities, the constituent assembly recommended, to no one's surprise, the creation of a new Hamilton supercity. Super-bureaucrats Gardner Church and David O'Brien later mirrored its conclusions.

The suburbs, however, had their own champions in then-Tory MPP Toni Skarica and then-Flamborough mayor Ted McMeekin. After receiving private assurances from the Premier of the day, MPP Skarica declared at an all-candidates debate in Carlisle during the 1999 campaign that "as long as I am the MPP" there would not be a Hamilton supercity. Skarica won nearly 60% of the vote on June 3, 1999.

When Premier Harris subsequently broke his word and imposed a new Hamilton supercity, MPP Skarica exercised the only honourable option available and resigned. To this day, he remains a hero among his former constituents, and the forced imposition of a municipal amalgamation remains one of the greatest affronts to local democracy.

In the 2000 by-election to replace MPP Skarica, then-Flamborough mayor Ted McMeekin ran under the Liberal banner. During the campaign, then-opposition leader Dalton McGuinty visited the riding and assured ADFA voters that they would be able to determine their own municipal future. Taking the Premier at his word,

ADFA elected Ted McMeekin as their new MPP with almost 60% of the popular vote. While the promises made during the 2000 by-election campaign did not come to fruition, MPP McMeekin was easily re-elected, taking almost 50% of the vote in the 2003 provincial general election.

#### 1620

But sadly, to this day, despite MPP McMeekin's best efforts, Premier McGuinty has not kept the local democracy pledge he personally made during the 2000 by-election campaign. And with each passing day, realists—including me—reluctantly acknowledge that it is probably becoming increasingly more difficult to "unscramble the supercity egg."

Six years after its creation, the new Hamilton supercity has been an unmitigated failure. As predicted by pro-democracy champions, residential property taxes have gone through the roof, up 35% in Flamborough between 2000 and 2006, while there has been a dramatic, almost catastrophic decline in even basic municipal service delivery. In addition, the total number of municipal employees has increased from 4,462, in 2001, to 5,732, in 2005, an increase of over 28%.

Still bruised by the amalgamation experience, some cynically wonder whether the provision of community councils in the new Municipal Act is nothing less than a tacit admission by Premier McGuinty that he has no intention of keeping his promise to ADFA voters about local democracy.

Which brings us to the present and the proposed Municipal Act.

When the two Flamborough ward councillors declined an invitation by Mayor Di Ianni to establish a Flamborough advisory community council, as had been done by other ward councillors in Ancaster, Dundas, Stoney Creek and certain parts of Hamilton, the mayor proceeded on his own. First he recruited three blue-ribbon community champions to review the resumes of interested applicants. This small group was mandated to choose from among the applicants the 12 or 15 members of the advisory committee. However, the mayor subsequently decided to appoint all 22 applicants, including myself, to the advisory committee. That decision resulted in the agenda being hijacked by advisory committee members with a specific agenda or concern. The result was that many broad-minded community council members who wanted to unselfishly promote the best interests of the entire community got frustrated and eventually stopped attending.

As a result of those experiences, I respectfully make the following suggestions. These then are the three recommendations that have been endorsed by the executive committee of the Flamborough Chamber of Commerce:

(1) Members of local community councils must be elected with a manageable number of members, say eight to 12. That allows for greater credibility and accountability and mitigates the potential of the agenda being hijacked by special interests. Elected during the course of



the regular municipal election, the additional costs would be minimal.

(2) Complete with a local budget, community councils must have some real power and authority on issues of specific local concern, especially when it comes to setting municipal service levels, which will have tax-bill implication.

(3) Recognizing that most controversies arise out of planning issues, the community council must have a strong, albeit advisory, role when it comes to making recommendations to the municipal council on all local planning issues.

Thank you for the opportunity to share my experiences and suggestions. I stand prepared to answer any questions you may have.

**The Chair:** You've left about two and a half minutes for each party to ask questions, beginning with Mr. Prue.

**Mr. Prue:** Thank you very much. This is a topic near and dear to my heart. Has anything changed? Mayor Di Ianni was not re-elected; it was a close vote. Is anything changing in regard to the new incumbent mayor's position on this?

**Mr. Kersten:** The incoming mayor has made it very clear that he's a strong proponent of community councils. He may not choose the avenue which Mayor Di Ianni had identified in terms of getting there, but his comments are that he's very much committed to community councils, and said so even pre-amalgamation.

**Mr. Prue:** And in terms of those, you have the number eight to 12 community councillors. Where did you get that number from?

**Mr. Kersten:** We were looking at the Flamborough community council, using that experience. We were looking at somewhere between eight to 10 to 12 members to be chosen from the total number of applicants. We didn't know of course how many people would be interested. We have found 22 to be unwieldy, and it's led to problems relative to special interests.

**Mr. Prue:** Now, I just want to be clear on this, because I'm not clear from reading this. Is this eight to 10 from the Flamborough area and Aldershot would have eight to 10, or is this eight to 10 in total for the community councils outside of the old city of Hamilton?

**Mr. Kersten:** No, I think see this as eight to 10 in each of the communities, but not neighbourhoods. There are some folks who believe, for instance, that if you are a neighbourhood within the city of Hamilton you should have a community council. My recommendation to you is to take a look at the historic communities—Ancaster, Dundas, Flamborough, Glanbrook and Stoney Creek—and perhaps wards in the city of Hamilton, and create community councils for each of those, but not diluted to the micro level beyond that.

**Mr. Prue:** On the second or the third point that you've made here, you are looking for a strong, albeit advisory, role when it comes to recommendations on local planning issues. The argument that's being made for the city of Toronto community councils is that they would have a final say on most local issues and, in terms of

planning, would probably only kick in where it was a major issue or where something was contrary to or deviating from the official plan other than that. Is that what you're trying to see, or do you see the Hamilton council overriding the local councils on literally all planning issues, everything from committees of adjustment on up?

**Mr. Kersten:** My experiences as a reporter/editor with the Flamborough Review and watching the local scene is that the biggest controversies arose over planning issues, large and small. But I'm also a realist, because whatever planning decisions were even made by the town of Flamborough council had to be consistent with the local OP and the regional OP, and were subject to ratification by the regional council. So in a very glorified way, even the Flamborough council was an advisory committee to higher bodies. That's what I'm trying to recognize here. I think that local issues should come to a community council for public input, for discussion, with a recommendation made to the ultimate—in this case, the council of the city of Hamilton.

**Mr. Prue:** Thank you.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Mr. Kersten, thank you very much for coming today. I've had the opportunity to discuss some of these issues with you in the past and appreciate your input. As you know from some of our previous discussions, people like yourself and Mr. McMeekin, of course, and others have advocated for the need for greater opportunities for local democracy. That is one of the reasons why, despite some resistance from even AMO and others—quite often upper-tier councils—to decentralization of some of these decision-making authorities, we've decided to proceed ahead. Of course, as part of the bill, there will now be the ability to do, I think, much of what you're recommending, depending on how councils want to structure.

I've just seen your three recommendations as to what you think community councils should be able to do. From my read of it, I think they would be able to do all of this under the legislation. I guess my question to you is, is there anything of your three points that you think would not be allowed under the current legislation?

**Mr. Kersten:** No, I believe that all three are permissible under the proposed legislation, as I read it. I'm not an expert on these matters. I want to hasten to add that.

If I may use the opportunity also to say, I'm not so sure—I purposely left these three recommendations rather undefined. In discussions that you and I have had about this issue, we've talked about a cookie-cutter approach. What may work in Flamborough may not work in Toronto and may not work in another community, so if we set the parameters and leave some local decision-making to local councils, I think that's healthy.

Let me give you just one example of what we can do. In Flamborough, which goes from Burlington to Brantford to Cambridge—it's huge; it's the second-largest land mass community in all of Ontario—we have 16 different



communities, 16 different settlement areas—Carlisle, Freelon, Copetown, Rockton, Troy. In each of these settlement areas we had something called volunteer sub-committees. Folks who were local volunteers would help with recreational programs, with the baseball field, with cutting the grass, with looking after the arenas. They all had their own budgets and they were all accountable to council at the end of the day, but they saved taxpayers one pile of money. That's just one example, not only in terms of saving some tax money but also in terms of building communities because people would come together to work that way.

**Mr. Duguid:** Thank you.

**Mr. Hardeman:** Thank you very much for the presentation. I appreciate that. First of all, I agree with the parliamentary assistant suggesting that most of the things in your three recommendations could, in one way or another, be done with the new amendments to the legislation. As long as you stay with the voluntary, most of them could be done under the present act. I guess the question really is, how do we get it there on behalf of the people if the local elected councils, as was mentioned in your presentation, are not in the position or don't want to do that and how do we get it done?

1630

There are a couple of questions I have, though. First of all, if we elect the community councils, how do you keep them totally advisory? When people go to the polls and are picked by their peers in their communities to do certain things for them, they then become the same as anyone else who was elected to do their jobs. You have to then define who's responsible for what and make them responsible. How do you elect them and still keep them totally advisory?

**Mr. Kersten:** The recommendation to elect is to try and mitigate the possibility of hijacking the agenda, which has been our experience. There were people for this or against that and they started to dominate the agenda and frustrated people who were looking at the entire committee. We think that in electing them, particularly if you do it concurrent with a municipal election, the costs would be minimal. That would also give them some credibility. It would also call them to account. There would be some accountability factor in that, but they would also have some real power on strictly local issues.

I hate to use the speed bump analogy because it's a big-city analogy, but I think it can be defined in terms of where the stop signs should go, speed limits, strictly local issues that we think could be decided by this local committee. They'd have to have a bit of a budget. If they don't have staff support and if they don't have some money to spend—and who knows? If they could be given a budget for recreation purposes and they save the taxpayers \$50,000, they could—now, what happens then, if you get into a conflict situation between the elected councillor for the ward and the community council? I think that for elected councillors to ignore the advice of a responsible community council, complete with public input, they do so at their peril.

**Mr. Hardeman:** There's an example of this in the past—

**The Chair:** You have eight seconds left.

**Mr. Hardeman:** —police villages. Is that what you're really recommending here, the police village, which got a set budget to do local issues?

**Mr. Kersten:** Something similar.

**The Chair:** Thank you, Mr. Kersten.

## CITY OF KITCHENER

**The Chair:** Our next delegation is the city of Kitchener. Welcome. Do you have a handout for the committee at all?

**Ms. Lesley MacDonald:** No, I don't.

**The Chair:** I just wanted to make sure. Welcome. If you could state your name and the organization you speak for, you will have 15 minutes, and if you leave time at the end, we'll be able to ask questions about your presentation.

**Ms. MacDonald:** My name is Lesley MacDonald, and I'm the city solicitor with the city of Kitchener. Accompanying me is Pauline Houston, the city treasurer for the city of Kitchener.

On behalf of the city of Kitchener, we've been asked to make submissions to you on Bill 130 and, more particularly, on two main issues or points of concern. The city of Kitchener will also be filing written submissions referencing a number of other concerns, comments and improvements.

I would be remiss if I first didn't acknowledge the continued progress that Bill 130 advances for municipalities. Kitchener has welcomed the opportunity to comment on this bill.

On behalf of the city of Kitchener, our comments today are focused on two areas: One is the municipality's ability to establish corporations, and the other is on the closed-meeting provisions and the absence of an exemption pertaining to information which, other than the fact that the information wouldn't be in writing, would otherwise be prohibited from release under the Municipal Freedom of Information and Protection of Privacy Act.

First dealing with establishing corporations, Bill 130 proposes to delete section 109 from the act, which specifically provides for the incorporation of community development corporations, and has rewritten section 203 of the act providing general powers for municipalities to incorporate. However, the authority to create the corporation is still predicated on regulation, for which new regulations have not yet been provided.

The city of Kitchener would welcome the opportunity to participate in further discussions with the province on the development of these regulations needed to effect the authority for municipalities to establish corporations. The current regulations under the Municipal Act are too convoluted and restrictive. For instance, they preclude corporations established by municipalities for certain purposes from actually owning land as it relates to the function of that corporation and the purpose of that corporation.



In order for municipalities to be more effective from an economic development perspective, they need the ability for their corporate entities charged with enhancing economic development to be able to hold land and be in a position to transfer land at a pace dictated by the prospective private sector customers.

As a stakeholder, Kitchener would like to participate in discussions centred on the development of these regulations. The establishment of corporations has limited value if the regulations don't address the needs of the municipality.

The other issue we have is focused on is the closed-meeting provisions and the absence of a Municipal Freedom of Information and Protection of Privacy Act exemption. As you know, there is one proposed change to section 239 of the Municipal Act pertaining to open meetings and the circumstances under which a meeting may be closed to the public.

The one area that has not been addressed in these amendments pertains to information that, but for the fact that it's not in a record, would be prohibited from release under the Municipal Freedom of Information and Protection of Privacy Act. Kitchener requests your further consideration in this regard.

Municipalities have business interests which involve public assets. Municipalities have an obligation to preserve and protect those public assets they held for the benefit of the community, yet the open-meeting provision doesn't always provide the appropriate opportunity for discussions in a closed-meeting environment to protect these public assets held for the benefit of the community.

In addition to public interests, municipalities are often seeking or involved in public-private partnerships. In order for municipalities to pursue these public-private partnerships and make responsible decisions in this regard, they need to be in a position where certain information can be received and discussed in a closed-meeting environment. Private enterprises need comfort when dealing with a municipality that certain financial and competitive information will be discussed in a confidential forum.

Under the Municipal Freedom of Information and Protection of Privacy Act at present, any such information found in a document would have benefit of protection, but in circumstances where it's being provided verbally, there is no similar protection available.

Kitchener would encourage the province to consider the addition of an exemption authorizing closed meetings to discuss information that is prohibited or information that, if it were presented in a document, would be prohibited from release under the Municipal Freedom of Information and Protection of Privacy Act.

Such a provision would greatly assist municipalities in their obligations to preserve and protect public assets and enhance their ability to pursue public-private partnerships.

Our appearance here today is as a stakeholder with positive yet constructive comments for what we believe to be even further refinements for the benefit of municipalities and the provision of services to their community.

I respectfully submit these comments on behalf of the city of Kitchener and welcome any questions you might have.

**The Chair:** About three minutes left for each group to ask a question, beginning with Mr. Duguid.

**Mr. Duguid:** Two questions, if we get time for the second one later on. You were talking about concerns about regulations in terms of the powers that are being afforded to municipalities to set up corporations. I haven't heard from anybody yet that the powers are insufficient. In fact, the new bill will provide greater autonomy for cities to do just that. Do you have any more specifics? Do you want to see even greater autonomy? Is there a way we can give municipalities greater autonomy? Is there somewhere we're holding back?

**Ms. MacDonald:** The regulations under the current act are very circular and very difficult to apply, and they restrict municipalities in five categories with five sets of different corporations being able to hold land. To us, that's a major detriment. One of the first things that should happen is, when the regulations are written for the new provision, they need to be expansive enough to allow that corporation to run its own business, in effect, and if they can't hold the land—and we're thinking economic development corporations primarily. If they aren't in a position to make land available at the pace the private sector needs, the private sector goes elsewhere.

It takes time going through a municipal structure to deal with those, and if you had an economic development corporation that could hold certain assets for the specific purpose of economic development, they would be in a much faster role in terms of disposing of those or making them available to the private sector.

**Mr. Duguid:** I think that responds to my question. Do I have time for a second?

**The Chair:** Yes.

**Mr. Duguid:** The second question is with regard to the open-meetings provision. You gave an example of public-private partnership discussions. In your view, the provisions in Bill 130 talk about discussions that do not advance decision-making. This is a challenge for us, to really determine what does and what doesn't and to give municipalities the flexibility they need to be able to discuss things that should be in confidence. Do you have any other examples of issues that should be discussed in public that currently can't be but that the new legislation will probably provide?

1640

**Ms. MacDonald:** We see the new section that's being proposed, or the amendment to the closed-meeting provision, as really dealing with sort of strategic discussions. Again, trying to follow the intent of the legislation and be very clear that the municipality isn't advancing decision-making, it's difficult to use that provision to deal with, like, public-private partnerships. Because, really, you'd be setting up two different meetings, one in the closed session and then trying to discuss it in a public session to advance the decision making, and there still may be need to discuss some of that confidential information. I don't



think we see the recommended provision that's being proposed as sufficient enough to deal with what we consider the problem dealing with corporations.

Under the Municipal Freedom of Information and Protection of Privacy Act, there are clauses that say that the municipality has an obligation to protect records that contain competitive information, financial, business practices—anything relating to that company that was supplied in a confidential manner, and unfortunately, there isn't something similar for the verbal.

**Mr. Duguid:** Thank you.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. I wanted to touch on the same items as we just did, with a slightly different view. The ability to form corporations under the Corporations Act: Much concern has been expressed by the private sector at our committee about municipalities setting up corporations to go into business in the private sector, that they would set up a construction company to build roads—the city of Kitchener sets up a company to do work for the city of Waterloo under contract and, because they have the assets of the community to work with, they can underprice it artificially, because they don't have to pay taxes because they already own the land. Your suggestion is that that would make that worse, that in fact they could hold land so they would have tax-exempt land to work from to provide services for others. Do you see that as a problem?

**Ms. MacDonald:** If I'm understanding your question correctly, municipalities can do that now. So nothing is going to change. Municipalities currently can enter into contracts with other municipalities to provide services that they need. Typically, those services are not directly in competition with the private sector.

**Mr. Hardeman:** Yes, but presently they cannot set up an independent corporation under the Corporations Act and do the same thing.

**Ms. MacDonald:** No, that's correct, but they can do it now.

**Mr. Hardeman:** That's the concern of the private sector, that they will do that. All the information now becomes confidential because they're under the Corporations Act instead of under the Municipal Act, so they can do things that the private sector can't do and provide unfair competition. They really believe that they need to open it up and that it should be open as the municipality is that owns them.

**Ms. MacDonald:** The current regulation actually sets out—I think it's about eight or nine different situations—the purposes for which the corporations can be developed. As long as those purposes are very clear as to what the intent is, I don't think the private sector would have to be alarmed.

Our biggest focus is really economic development in terms of industrial parks that we would hold and trying to convey the land. If you go through the normal process internally, that may delay a private company developing as quickly as they want, so they may move on to other land. We want to be able to have economic development corporations that have the ability to sell the land fairly

quickly, without any constraints in terms of the timing process that we would otherwise have. It's not the intent to take on other businesses that would be in direct competition to the private sector.

**Mr. Hardeman:** The other one is on the closed meetings. You bring up an interesting scenario. Up until now, all we've heard is how this is going to open it wide, because you can discuss all other matters providing it doesn't further the decision-making process. You bring up the fact that if you have a discussion, and it doesn't further the thinking or the process within council, then there wasn't much sense in having that discussion. If you use that argument, then this clause would not include any further items that you could take into closed sessions. Is that right?

**Ms. MacDonald:** I think I sort of lost you on some of your analogy, but bear with me. I'm hoping I will touch upon it correctly. The reality is that the section that's being proposed may have some merit strategically but, taking the section literally, with all the current exemptions, I would think most municipalities are going to be very cognizant of the public's desire to know what's happening, so they should be very careful and methodical when they participate in discussions to ensure that they don't breach the requirement that they don't advance the decision-making. It's a little difficult to see how else it would be used.

**Mr. Hardeman:** Thank you.

**The Chair:** Mr. Prue.

**Mr. Prue:** I'd just like to get on to the open meetings. This is quite the bone of contention. Many people are of the opinion that there are too many closed meetings in municipalities, and if you talk to ordinary citizens, they often think that deals are cooked up behind closed doors and that the councillors and the mayor would come out and pass a resolution that was already agreed to inside.

I used to be a mayor and a long-time municipal councillor. We never had many difficulties dealing with business. You would send somebody like yourself or the treasurer or some senior bureaucrat out to make the deal. Council would set the parameters, they would send the bureaucrat out, the bureaucrat would come back with the deal, we would discuss it. We could do that in the open, we could do it in closed if it needed to be closed. How would this change it, other than getting all of council now involved in a decision?

**Ms. MacDonald:** I think the biggest change is, you're finding far more sophisticated companies out there with competitive positions, plus financial information that they feel they need to put on the table as part of the negotiations. In order to properly convey that to council, they would like that opportunity to participate in the discussions. It's not something they want to say publicly and it's not something they necessarily want to put in a written report. They feel there's an exchange of dialogue required and right now there is no true mechanism to do that.

This would allow them to come in and have that verbal presentation as if they'd put it in a written report. So it's really no different than what other statutes protect.



**Mr. Prue:** Okay. So it's the companies that are requesting this, you're saying, more than the municipalities?

**Ms. MacDonald:** One of them is the companies, but even from a municipality point of view, from time to time we will have business interests that involve our public assets and it's inappropriate and sometimes premature to raise it in a public forum until we see if it's even worth going down to the next step without having that discussion. We don't necessarily have the capability of having that discussion in a closed session.

**Mr. Prue:** But why is it necessary for all of council to be involved? This has been the norm in the past, to send a delegation off, usually a bureaucrat, after council has made a preliminary decision. Why is it necessary to have all of council privy to this?

**Ms. MacDonald:** Typically, at least in our scenario, all of council likes to know the details of the arrangement because they feel they're responding to the taxpayers and they have the obligation to completely know the details before they vote on it. I can tell you, across Canada, if you look at the municipal freedom of information legislation and closed-meeting provisions, probably about 50% or more of the provinces have a similar provision to what I'm suggesting. It's just making sure—it's a carry-over of the municipal freedom of information and protection provision to a verbal discussion.

**Mr. Prue:** But the other aspect, if I still have time, on closed meetings is also quite controversial. You've not touched on it. This allows members of council who are not present to vote by telephone or whatever else. I've raised the scenario of sitting on a beach in Acapulco with a drink in one hand and a cellphone in the other and voting at your local council meeting. Has your council taken a position—

**Ms. MacDonald:** This is on the electronic?

**Mr. Prue:** Yes.

**Ms. MacDonald:** In fact, it is in the written submissions. We believe it should actually apply to a closed meeting as well. It doesn't include a vote but it does include participating in a closed session, and one of your perfect examples is, you can have a public meeting, an issue comes up for which they seek legal advice, you go into closed session and the council members participating in the public component electronically are now precluded from participating behind closed doors to hear the advice. So when it comes back out in public session and the meeting carries on or whatever decision is rendered, that person hasn't got the benefit of the advice that was given. So we see it as an obligation or an ability for council to participate both in closed session and public session.

**The Chair:** Thank you very much. We appreciate you being here today.

#### HAMILTON CHAMBER OF COMMERCE

**The Chair:** Our next delegation is the Hamilton Chamber of Commerce. Welcome. Please make yourself comfortable. I only have one name here, so before you

start, if you could introduce yourselves if you're both going to speak, and the group you speak for. You will have 15 minutes. Please make yourselves comfortable. After you've introduced yourselves, you'll have 15 minutes. If you leave some time at the end, we'll be able to ask you questions.

**Mr. Dan Rodrigues:** All right, thank you. My name is Dan Rodrigues and I am representing the Hamilton Chamber of Commerce's government affairs committee. With me, and I'll do a brief introduction later, is current chamber president Len Falco.

**Mr. Len Falco:** Good afternoon.

1650

**Mr. Rodrigues:** The Hamilton Chamber of Commerce's government affairs committee is comprised of various business representatives that carry a passion for proper governance within the city of Hamilton. When there was mention of the potential for the creation of community councils, our committee added this to our list of priorities to become involved. Consequently, a sub-committee was formed and I was elected chair. Recommendations were created on the execution of community councils within Hamilton.

Normally, when an issue is raised and we require the chamber to create a policy, a committee will author a recommendation, which you have before you today, that would be approved by the committee prior to being sent to the chamber's board of directors. Once the board of directors views and discusses the document, the chamber would then either adopt or deny the recommendation from the committee. While the recommendation that you see before you today has yet to be adopted by the Hamilton Chamber of Commerce as a policy, I'm going to ask that you note our current chamber president, Len Falco.

**Mr. Falco:** Just to follow up on what Dan has said, this recommendation that's been put forth to the board of directors of the Hamilton Chamber of Commerce is actually being presented next Tuesday at the meeting and will no doubt be endorsed at that time. I just wanted to let you know that it hasn't formally been approved yet, but the presentation and the recommendations that you see before you will undoubtedly be approved.

Just to give you a little bit of background, prior to amalgamation the Hamilton Chamber of Commerce was very instrumental in making a presentation before the provincial-municipal transition board promoting the idea of community councils. We still feel that the community council concept is very critical to improving the overall situation and helping with the total amalgamation in order to have an effective amalgamation, especially with a city as large and diverse as Hamilton. So with this presentation, we're very much in agreement with some of the items in Bill 130 that relate to community councils.

I'll turn it back to Dan.

**Mr. Rodrigues:** As mentioned, it's yet to be approved by the chamber. We just want to indicate that what we're going to present is regarding the community councils, not Bill 130 in its entirety.



Prior to leading up this, I had attended a town hall meeting that was hosted by Councillor Art Samson of ward 13, which is essentially Dundas. The guest speakers were MPP Ted McMeekin and MPP Brad Duguid. Also in attendance were Councillor Dave Mitchell of ward 11, which is Stoney Creek and Glanbrook, various representatives of current community councils or committees from Ancaster, Glanbrook and Dundas, and members from the community of Waterdown and Flamborough. It should be noted that I was the only person there from Hamilton proper at the meeting. Also, members of the current Ancaster community committee carried much of the input in regard to the recommendation review as they were actively involved in their committee.

I also spoke with Dr. Andrew Sancton—he's been referred to quite liberally—from the University of Western Ontario to gain some insight into the reasoning and executional practices of existing community councils within Canada.

I have also researched some US communities and their existing community councils, as well as Halifax, Montreal—and, I should note, Toronto—and Winnipeg. I left that out of there and I apologize. Winnipeg offered probably the closest correlation to Hamilton, and I even spoke to a resident in Winnipeg in regard to their interpretation of community councils.

I've also reviewed Bill 130 and have attempted to interpret its dialogue and intent to ensure that there are some positive gains as it relates to community councils.

A brief history: Hamilton as a community achieved city status in 1846 and holds a rare marriage of topography and human settlement, one of only a handful of urban centres in North America that is tiered and encircles a bay of significant size to serve as an international port. Belonging within the Wentworth region, the city co-existed with the neighbouring towns and communities of Dundas, Glanbrook, Ancaster, Stoney Creek and Flamborough. Each of their neighbours holds their own roots of origin and pride in their name. Typical of the mindset of smaller communities, there are reservations about being a part of a larger municipality such as Hamilton. Prior to amalgamation in 2001, there was heated discussion over Flamborough, which was split earlier in 1974, with portions to Burlington and North Dumfries township.

The new city of Hamilton is now 65% rural lands—lands that were comprised of surrounding communities that had council representation greater than one or two members, which is the current councillor representation within Hamilton city hall. This perceived imbalance of councillor representation has led those in the suburbs, the old communities, to request that their decision-making powers be returned. Understanding—or not—that de-amalgamation is not going to occur, the reasoning would be to allow the communities to engage in active discussions and decisions that affect their areas. Through the leadership of councillors in wards 11, 12, and 13—Glanbrook, Stoney Creek, Ancaster and Dundas—community councils or committees were formed to actively

engage the citizens of those communities in the progression of Hamilton through their community. Similar committees were formed in Hamilton in ward 8, which is west Hamilton Mountain, and ward 9, which is upper Stoney Creek.

Our committee has recommended that the goal in establishing community councils is to be designed to hold uniform procedures that would see the successful progression of Hamilton as a city yet allow different policies as they relate to varying community needs. Bill 130 allows this.

Success in Hamilton is largely dependent on the health of the communities that make up the city of Hamilton. It is also dependent on the coordination of the communities, such as in transportation and certain planning things. Traffic issues are an example of an imbalance within the planning of living, working and playing within the communities.

We've included in the policy recommendation two concepts of a community council. The first option identifies community councils by either individual wards or by natural communities within a ward. This concept has merit through applications within the suburban boundaries, wards like Dundas and Ancaster wherein there is only one councillor representing there. However, the disadvantage of this would be the creation of too many community councils within the city. The second option of creating five community councils would meld neighbouring wards to work as one, a similar situation to most Canadian cities that hold community councils today. However, ensuring that each of the ward councillors within a specific community council appreciates the concept could create some push-back. In either option, those who participate on the community councils must be expansive thinkers regarding the city, versus focusing on the impacts on their community only. It is imperative, whichever option is adopted, that members of the community at large become actively engaged in the decision process as it would impact their community.

Our recommendation also touches on the need to review the existing ward boundaries as they reflect communities and growth within Hamilton.

As a conclusion, the Hamilton Chamber of Commerce's government affairs committee thanks the standing committee on general government for the opportunity to address you today. We understand that when creating a bill as complex as Bill 130, there are bound to be opportunities to address the finer details of its copy. We applaud the government for addressing the need to increase municipal responsibilities, as they are the front line to the taxpayers with respect to government representatives.

Just on a personal note, being born and raised in London, Ontario, we had a similar situation many years ago when London amalgamated with its neighbouring communities. Through the creation of community councils in Bill 130, I suspect that not only Hamilton will benefit but others like London and Cambridge would prosper as well.



**The Chair:** You've left about two minutes for each party to ask questions, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. Presently, as advisory bodies, community councils could be constituted in any community that presently exists by the local council. What's the suggestion of the chamber that would be different than this: that communities should be forced to have community councils, or that the upper tier, shall we say, the governance that's presently there, gets to decide where and how community councils would be set up?

**Mr. Rodrigues:** I believe, as it sits right now, we're recommending that we go with the five separate community councils, understanding that how they're comprised and what their duties are will obviously be approved by the city of Hamilton. Each particular community council would be comprised of two to three councillors. From there, they can have a citizen-appointed board within.

Our concern brought forward was that whatever we do for the suburbs must also be applicable within the city itself. So allowing a suburb the opportunity to do something should be allowed right across the city.

**Mr. Hardeman:** But presently, the intention of the act is to make it a permissive piece of legislation wherever possible.

**Mr. Rodrigues:** That's correct.

**Mr. Hardeman:** The permissive part of community councils is the fact that municipalities "may" set up community councils. Are you suggesting that this legislation should set up the community councils, the number of community councils and the services that they're going to provide and deal with, as opposed to the city making that decision?

1700

**Mr. Rodrigues:** No. We're perfectly fine with the city mandating and setting up and doing it that way. In my discussions, specifically with Dr. Sancton, he's indicated that certainly the suburbs will be the first to jump all over a community council concept and the way it is formed, and that it will take a little bit more time before the city or the inner—usually the downtown area is the last to jump on board as they're formed. Certainly, as it's written today, it's acceptable, as the city can mandate how the community councils are formed, and it allows each community council area to decide whether or not they want to have a community council.

**Mr. Prue:** In terms of the city councils, where do you see them fitting in, in terms of override? It's been suggested in some municipalities that the community councils would deal with all matters of a minor nature, and that those would not go to the city council. Do you see it the same way? They would have power to look at things like speed humps, where stop signs go, what sidewalks get repaired and that kind of stuff.

**Mr. Rodrigues:** I see a similar situation, very much. I see that as an advisory group with certain—I wouldn't call it powers, but certainly input towards the development within their community. So if we're talking about a

speed bump or whatever, it would be discussed at the community council level, and then it's just merely a rubber stamp at the city council level. Currently, if somebody in Dundas is proposing a stop sign at a particular intersection, the rest of the city councillors are going to look at the Dundas councillor and say, "What do you want?" If the councillor is on side, it's a rubber stamp, so working in that—

**Mr. Prue:** Would that were true in Toronto. I'm looking across at my colleague there. We used to get five binders about the size of this one here, and three of them would be from community councils. And people outside the area would oftentimes hold them. It was kind of bizarre.

What I want to know and what I want to be clear on is, where would the city intervene? Where would the whole council intervene? There's no sense, in my view, in setting up a community council if it's going to be second-guessed by the council downtown.

**Mr. Rodrigues:** I would expect that any recommendations the community councils bring forward to the city council would only be those that impact the city as a whole. So if a particular community council was looking at doing free parking on a particular street in a neighbourhood that had no impact whatsoever on the rest of the city, that could be dealt with at the community council level.

**Mr. Prue:** And that would be without a downtown override?

**Mr. Rodrigues:** Exactly.

**Mr. Prue:** Okay. Thank you.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** I want to thank you for coming forward today and for your previous participation. I want to say that I am extremely optimistic when I see the input that we've received from residents across the city of Hamilton, the interest that residents are taking on all sides of the debate. It just shows how much the people of that region care about their community.

It's tough, because with forced amalgamation, as Mr. Prue and I experienced in Toronto, the wounds run deep. The emotions are still in place, and it's difficult to move on and do the best you can to ensure that local needs are being looked after and that local creativity can continue to be part of decision-making, yet ensuring that the city as a whole moves forward as well, both financially and in terms of quality of life.

I want to ask you, do you share my optimism that the people of Hamilton will be able to use these new powers to create a dynamic that's going to allow that to take place?

**Mr. Rodrigues:** Well, I'd have to say, being a Hamilton guy—I'm not from the suburbs—I look at this as a golden opportunity to grab this and create something that's going to just make Hamilton itself a much more successful city, from a personal standpoint. I think, through the chamber's support—certainly they see the same thing; they share the same vision. We run with 15 wards and probably 12 different visions, and through



community councils and the melding of this, we would bring the focus a little bit more into tune. That would help us only move forward.

**Mr. Duguid:** Thank you for your leadership in this. It's much appreciated.

**The Chair:** Thank you, gentlemen, for being here.

#### AIRPORT TAXICAB (PEARSON AIRPORT) ASSOCIATION

**The Chair:** Our next delegation is the Airport Taxicab (Pearson Airport) Association. Welcome, gentlemen. Make yourselves comfortable. If you're both going to speak, could you say your name for Hansard and the organization you speak for. After you've introduced yourself, you will have 15 minutes. If you leave time at the end, there will be an opportunity to ask questions of your presentation, and we do have your letter in front of us.

**Mr. Karam Punian:** My name is Karam Punian. I'm from the Pearson International Airport taxicab association. On behalf of the president of the Airport Taxicab (Pearson Airport) Association, I request your very careful attention to a matter of grave concern to the whole airport taxicab and limousine industry. The proposed Bill 130, the Municipal Statute Law Amendment Act, 2006, is intended to introduce changes that very clearly have a negative impact on the exceptional, excellent customer service being provided by the airport taxi/limo industry to the travelling public, to and from the airport.

Several years ago, because of the extreme public interest in a professional, reliable taxi/limousine service to and from the airport, the pre-arranged pickup privilege from different municipalities was entrusted to the airport taxis and limousines. Years of tremendous hard work, dedication and considerable investment by the airport taxi/limo operators has established a system of excellence, which is one of the best in the world.

From time to time, the majority of the travelling public has endorsed the exceptional professional customer service to and from the airport by the airport taxi/limo operators. Various studies, surveys and especially the 1990 Bartlett report have reported and supported that the present airport taxi/limo system that has evolved due to the provisions laid out in the Municipal Act is in fact to the benefit of the public interest.

Taking care of the customer choice, the airport pre-arranged pickup by the non-airport licensed taxis and limousines was never ever objected to by the airport taxi/limo operators. The intended changes in the proposed Bill 130 will have a significant adverse effect on the livelihood of the airport taxi/limo operators. It will have a very ruinous impact on the quality of customer service currently being enjoyed by the travelling public.

On behalf of all the airport taxi/limo operators, I humbly request you to protect the public interest and the livelihood of the airport taxi/limo operators and further request that you may kindly ensure that any proposed changes in the Municipal Act should not disturb the

existing high levels of service being provided by the airport taxi/limo operators.

We just checked today the pre-arranged pickup from the airport. On Friday, Sunday and Monday, there are over 1,000 pre-arranged pickups by the Toronto-based companies from the airport. On the other four days, they pick up 600 pre-arranged trips from the airport. The airport has over 636 cars; 82 of them have Metro-based licences. The rest of them are from the different municipalities. At the airport, there are over 10 brokerages, including the limousines and taxis, and each brokerage has over 100 charge-account customers. I mean that the charge-account customer is pre-arranged by the corporations operating in Toronto and surrounding areas.

There are big companies involved, like the Royal Bank and financial corporations. Over 2,000 individuals are working in the industry at the airport in limousines and taxis. Just recently, the airport authority issued 40 new licences; 30 of them were given to the Toronto-based companies.

1710

I serve my company as a secretary and director. Our bylaws and constitution forbid us to pick up any customer from Toronto and any other municipality who is not pre-arranged. Toronto has close to 5,000 taxis and the airport has close to 636. In this pattern, we have no objection—to stop or ban—to the Toronto taxis from picking up at the airport. At the same time, for the customer service we want, there should be no negative effect on the airport cars in Bill 130, so that they can pick up their pre-arranged fares in Toronto and the surrounding areas. Thank you.

**The Chair:** Thank you. You've left about three minutes for each party to ask questions, beginning with Mr. Prue.

**Mr. Prue:** This government, in a bill earlier this year that I believe your taxi industry supported, granted you a virtual monopoly at the airport. It was called the anti-scooping bill and it makes it literally impossible for Toronto cabs to pick up at the airport. Did you support that bill?

**Mr. Punian:** Well, that bill was not for Toronto taxis; that was for unlicensed taxis, as far as I know, so we supported the bill. The taxis, whoever is providing the service to the customer, should be properly licensed and insured and must meet the safety standards. Yes, we do support that bill.

**Mr. Prue:** That bill requires that they pay \$12 or \$15, I believe it is, to sit in a line in order to pick up the pre-arranged fares.

**Mr. Punian:** No, that's not in the bill. That's the Greater Toronto Airports Authority's pre-arranged policy. There's nothing in the bill like that.

**Mr. Prue:** Toronto taxicab drivers say that it's virtually impossible for them to scoop at the airport, but the airport limousines often scoop Toronto fares downtown. They tell us stories of what they call "cookies" passing between airport limousine and taxi drivers to the doormen at hotels in order to get lucrative driving. Does that ever happen?



**Mr. Punian:** No. Let me tell you, I said in the last hearing and I am telling you again today, I served as my company management team member three times. All the regulations and bylaws of all the brokerages are the same. In our constitutional bylaw, no car can pick up—they cannot even go to the hotels. In the last hearing, I provided that if you catch any of our cars, we will pay you \$5,000 as a reward if any of your drivers or yourselves catch any of our company cars picking up the fare by paying to the doorman. That's not true.

**Mr. Prue:** In terms of the bill that you got, and your association lobbied for and supported, the Toronto cabbies think this is fair. They think they're getting their own part back, that they can't scoop where you are, you won't be able to scoop where they are, and they'll be better off if we allow this section of the bill to go through. What do we say to the 5,000 cabbies who get virtually no rides to the airport—\$50 or \$60—from downtown?

**Mr. Punian:** Well, it's not in my hands. I believe it's not in your hand either. Transport Canada at one point issued certain licences to serve the public at the airport, and when the GTAA took over, they honoured the same permits under the lease. So under the airport authority, the Toronto cabbie or anybody else is free to pick up. The rule and regulation is put by the GTAA, not by us. As I mentioned in the beginning, in three days, the Toronto-based companies picked up over 1,000 pre-arranged fares from the airport. In regular days, they are picking up over 600 fares a day. So they are free to go. The airport is not in our hands. I believe that's their policy.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Thank you for your letter and for coming here today. I hear about your issues almost on a daily basis. My seatmate happens to be Vic Dhillon, and Mr. Dhillon almost non-stop talks to me about some of the issues facing your industry, so much of what you've said here I've heard from Mr. Dhillon.

The one thing I would ask, though—I'm looking at what you're saying here. This bill really isn't about scooping, cookies, illegal cabs, or limos versus taxis. What the bill does is give municipalities a general ability to license businesses or services that exist. It has to be done on a cost-recovery basis, so it's not a licence to go out and get revenues. It's a licence so that if there's a public service they'd like to somehow regulate, they could impose some form of licensing. It doesn't tell municipalities what they have to do.

When this bill passes, nothing that I'm aware of changes with regard to your industry. I guess my question is, what changes when this bill passes? Yes, municipalities will have the ability to license within their own communities. Toronto already has that ability and doesn't seem in a rush to use it at the present time. What really changes with regard to this bill?

**Mr. Punian:** We believe that before, it was the privilege, on the basis of all the municipalities, that airport cars were allowed to pick up the pre-arranged. Let

me give an example. Five years ago, there was a policeman in Toronto—I forget his name—who started giving tickets to each and every car, regardless if it was pre-arranged. Then we had to go to court and explain to the judge. None of us was ever convicted. There were no fines. We feel that it was just harassment, because we were putting in our time and our money.

We do appreciate clarity in the bill. As it was before in the Municipal Act, no municipality could pass legislation that—in the past, it meant the Transport Canada permit or the GTA permits—stopped them from picking up the pre-arranged. So that's our grave concern. We have had that experience in the past; we don't want any trouble in the future. Let's say there's a customer in the car, the flight has 45 minutes until it goes, and someone stops the car and says, "Oh, the piece of legislation says that you cannot do this."

We want clarity. We want our status as a public service. It's good for the public, it's good for you, it's good for us.

**Mr. Duguid:** The service that you provide, as you said, is a valuable public service. I've heard of no municipality—in fact, I've heard mayors like Hazel McCallion speak in favour of ensuring that limo services are provided in cities like Mississauga. Are you aware of any municipalities that have considered or are considering doing anything that would be harmful to your industry?

**Mr. Punian:** If you're opening up one special bill, our fear is, if there is no clarity, or if there are amendments or anything, it can disturb the operation, it can disturb customer service. Our concern is, if you're going to rewrite or amend something, it must be black and white. We don't want trouble for ourselves, we don't trouble for drivers and we don't want trouble for customers.

**The Chair:** Thank you. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. I guess I'm the odd person out. I'm not from Toronto, and we don't have a lot of problems in my part of the country with cabs, except getting one when you need it.

You said that you have concern that this bill will be damaging to your industry. Could you explain to me the part of the bill that you are concerned will change the way you do business and that will hurt your industry?

**Mr. Punian:** Let's say this bill gives the power to municipalities to regulate business operations—let's say the taxi business industry. They could regulate that only municipal cars licensed under their bylaws are allowed to pick up the pre-arranged. Now, the airport is protected under the Municipal Act of Ontario, not the city bylaws. So our fear is that if you give the power to the city of Toronto and there is no clarity, that it's a grey area, then, to me, they can have their own bylaw, which could create trouble for us.

**Mr. Hardeman:** But if the municipality—if Toronto decides that they are going to change the way they do business, they could in fact have a bylaw that requires your industry to be licensed in Toronto.



1720

**Mr. Punian:** It's not only the licence issued; it is the individual plate issued too. To get the licence as a company is a different thing. As I mentioned in the beginning, there are 636 cars working out of the airport; 82 of them are from Toronto and some are from Mississauga and Brampton. They're from all the municipalities. So we feel that if, in the same way, it goes to Toronto council, they can put it so that the pre-arranged can only be picked up by Toronto cars and the rest of the 500-plus cars, we believe, will be in trouble.

**Mr. Hardeman:** So today, your airport service doesn't need to be licensed anywhere?

**Mr. Punian:** No. We need to be licensed by Transport Canada, under the GTAA, and we need to be licensed by the municipality, whether it's Toronto or Mississauga or Markham. We have to have two licences: one from the municipality and one from the airport authority. But the only privilege is that we are allowed to pick up pre-arranged fares as long as they're going back to the airport. So we feel that after this bill, that privilege is in danger.

**Mr. Hardeman:** So your concern is that Toronto would just eliminate your ability to pick up fares in Toronto and take them back to the airport.

**Mr. Punian:** Exactly.

**Mr. Hardeman:** Is there any reason why they would do that?

**Mr. Punian:** We don't know. Mostly we're hearing from the industry, we're hearing from the media. If you look at the taxi industry—we've been hearing this for years and years—it can go any way. If you're opening the legislation, it can go any way as long as things are not clear there. The only request we're making is that things must be black and white and clear. It's good for the city of Toronto and it's good for us.

**Mr. Hardeman:** Thank you.

**The Chair:** Thank you very much, gentlemen, for being here today on such short notice.

#### ONTARIO MUNICIPAL ADMINISTRATORS' ASSOCIATION

**The Chair:** Our next delegation is the Ontario Municipal Administrators' Association. Welcome. Thank you for being here today. I know you've been here before, so you know the drill. If you can identify yourselves and the organization you speak for, you will have 15 minutes. If you leave time at the end, we'll be able to ask you questions about your delegation. We have your presentation in front of us.

**Mr. Steve Robinson:** Good afternoon. My name is Steve Robinson. I am the chief administrative officer of the town of Cobourg and a member of the board of directors of the Ontario Municipal Administrators' Association. With me is Nigel Bellchamber, the part-time general manager of our association. He's also a former CAO.

Our organization represents nearly 200 chief administrative officers and city or town managers from across

the province, from Cornwall to Toronto to Sioux Lookout.

We've had the opportunity to participate in the consultations on the Municipal Act leading up to Bill 130, and we certainly appreciate the co-operation of the Ministry of Municipal Affairs and Housing staff in that regard. Many of the recommendations that came from us and others during that process have been incorporated into this bill. We congratulate the government for moving ahead towards a more trusting relationship with municipal government. But as you may expect, we have several concerns—five or six topics, actually—and we would like to present those to you today, along with some suggestions for improvements in the bill.

One of the first ones has to do with the head of council. While many of our members would prefer to see the term "chief executive officer" in reference to the head of council eliminated from the act because it has been a source of confusion and sometimes conflict for councils, we are pleased to see that, in retaining it, the bill clarifies that it signifies a political leadership role rather than an administrative one.

But the bill then places in subsection 98(2) an unusual obligation on the head of council. This is an obligation to advise and make recommendations to council with respect to ensuring that administrative and controllership practices, policies and procedures are in place, along with procedures to guarantee the accountability and transparency of the municipality's operations. Our first reaction was that there must be an error in the drafting and that this responsibility was intended to be placed on the CAO in section 229, since provision of managerial and technical advice to council is a staff role. Of course, if council does not like his or her advice, it can seek outside professional and technical advice; and if it still doesn't like the advice, they can seek a new CAO.

Heads of council are not typically trained nor resourced for this role, and we suggest that the bill be amended to transfer this responsibility to the CAO, if one is appointed, or to delete this section entirely and leave the responsibility with council as a whole, where it now is, rather than impose this obligation on the head. This was not an issue raised during consultations, and it has the potential to once again muddy the relationship between senior management, council and the head of council.

In the bill there are a number of policy requirements imposed upon municipalities that in themselves are not unreasonable. However, as the bill is currently drafted, it does not permit councils any time after passage of the bill for their consideration, development and implementation. That is neither practical nor reasonable. Across the province new councils will just be having their first full meetings in January. There needs to be a period of time in which councils can learn about their organizations and consider policy parameters and recommendations from staff. We encourage that at least a year be built in for this element, similar to what happened in the Municipal Act, 2001, transition.



Accountability issues are next, and there are also several other accountability provisions in the bill that we would like to comment upon. These include the optional requirement for a municipal ombudsman and the mandatory requirement for an investigator into allegations of inappropriate closed meetings.

As the bill is drafted, if a complaint is received and the council has not appointed an investigator, the provincial Ombudsman automatically becomes that investigator. As mentioned here, we're dealing in many cases with brand new councils, and on top of that now a brand new concept. It is only appropriate to give councils time to consider the option presented to them and how they might implement it before requiring it to be in place.

With respect to the appointment of a municipal ombudsman, we agree that the way it's drafted now, being optional is certainly appropriate. We understand that it has been suggested that the provincial Ombudsman be granted jurisdiction generally over municipal affairs, and we would counter that there is no evidence to support the need for a mandatory ombudsman for every municipality in the province.

The office serves a very useful function at the provincial level. Given the complexity of administration and the distance that most Ontarians find themselves from the workings of Queen's Park, it is only appropriate that there be provision for citizens who have exhausted every other opportunity for redress regarding maladministration to be able to request the services of the provincial Ombudsman.

But as was recognized when the provincial office was first established, municipal government is much closer to the citizens that it serves. In most communities, not only do citizens know exactly where municipal administration is located and where services are delivered, they likely will be personally familiar with at least one and maybe more of their municipal councillors. In fact, as you know, in a town the size of Cobourg—20,000 people—they know where we live, where we shop, where we get our hair cut. We have all kinds of people talking to us all kinds of times about what happens. There is a great relationship.

I submit that the ability to file an informal or formal complaint is much greater and the layers of red tape much fewer at the local level. We don't see any justification that would warrant a one-size-fits-all approach to ombudsman services in the local government in Ontario.

One of the new elements in this bill is the requirement in section 270 related to the protection of property and civil rights affected by municipal bylaws. It's not clear from conversations we have had as to exactly what that might mean. Consequently, we do not understand what the benefit is to the ratepayers in our communities. We would suggest that that section be deleted, or at the least deferring proclamation of the bill until such clarification can be achieved.

Another concern is about the new ability of the provincial government to declare a provincial interest and suspend a bylaw for a period of 18 months. We believe

that this is an authority that would be difficult for the province to use. From a practical political point of view, it would be difficult to actually step over those bounds. From a philosophical point of view, it certainly seems to fly in the face of the new, more mature relationships that we're trying to establish. In terms of business arrangements with the private sector, it would surely result in the other party being less willing to make an arrangement without being appropriately protected against the risk of a program suffering a surprise provincial veto, hence increasing the cost of doing business and stifling innovation, or both of those. It would not harm Ontarians if this authority were removed.

I know you've heard before on the subject of open and closed meetings, and our organization is certainly supportive of conducting municipal business in public. We note that you have had many suggestions from others with respect to mechanisms that would allow for in camera, technical and other briefings for councillors, which would include the ability to ask what some might perceive as dumb questions in a forum that would not subject the person asking the question to potential public embarrassment, particularly an issue for those new in their political careers. This is a high-profile issue right now because we have new councils that we need to do orientation with. I'm sure you can all understand what it would be like, for instance, if you're newly elected to the Legislature, to have your briefings done in public. It certainly changes the kinds of questions that are asked.

1730

In some circumstances, the current provisions regarding closed meetings would enable these discussions to take place, but we would agree with the drafters of Bill 130 that there is a need for a general provision for briefings on an unrestricted basis that we would expect councils to use sparingly but appropriately. Otherwise, as I've said, municipal councils will continue to be the only levels of government whose confidential briefings cannot be provided, as a general rule, to allow for free interchange of information between politicians and their staff.

Municipal government already conducts a significantly greater deal of its decision-making in public session than does either of the provincial and federal levels of government. To recognize that there's a need for free exchange in briefing and training sessions would not significantly alter the very high degree of public accessibility that currently exists.

As I said in the beginning of this presentation, we very much support the broader approach to powers and the greater recognition that municipalities are responsible and accountable governments. Our recommendations have been made in that light.

Municipalities may make a few mistakes in exercising their broader powers. With the hundreds of thousands of individual decisions that 445 municipal governments across Ontario make every year, there will inevitably be decisions that, in hindsight, give cause for concern. There always have been and always will be. However, we will learn from one another, as we currently do, and encour-



age the province to give our municipal governments the ability to learn, to experiment and to excel. Our members—the Ontario Municipal Administrators' Association—are keen to be part of this evolutionary phase of local government in Ontario.

**The Chair:** Thank you. You've left about a minute and a half for each party to ask questions, beginning with Mr. Duguid.

**Mr. Duguid:** Thank you for your presentation today and your ongoing input with the ministry. I guess I'll start off with what I see as sound advice coming from your part when it comes to some of the decisions you'll have to make when, assuming passage through the Legislature, this act comes into force, and that includes decisions like the appointment of an investigator on public meetings. We've heard from others with respect to that as well and we're very seriously considering the advice in terms of the timing. I can let you know we're having a good look at that. I can't say anything further at this stage because we're still looking at it, but I'm very optimistic that we'll be able to address some of the concerns with respect to timing.

I guess the other question I had for you is with regard to the provincial interest aspect. The province obviously needs to ensure that it protects the provincial interest as we move forward, in particular with a new act that municipalities may interpret in different ways in terms of what their jurisdiction is and is not. Without some form of—you called it a veto. I wouldn't say it's a veto; I would say, though, it is an opportunity, when a provincial interest is at stake, for the province to be able to put a hold on what's going on and, if necessary, 18 months down the road or whenever, pass legislation. Do you have another mechanism in mind that would allow the province to account for the provincial interest?

**Mr. Robinson:** Historically, one of the mechanisms, of course, is the fact that this is a duly elected form of government. When they make decisions that are not in the public interest, those politicians normally bear the brunt of that in the next election.

I don't know; do you have anything else to add in—

**Mr. Duguid:** I'm sorry. If I said "public," I meant "provincial interest." I may have misspoken.

**Mr. Nigel Bellchamber:** I think there are some other examples where the provincial interest is stated up front, and I think the way to deal with this effectively would be if the provincial interests were stated up front rather than parties entering into negotiations, discussions and perhaps a business arrangement, contractual relations, not knowing what that provincial interest might be. I think stating it up front, as it's done in some of the planning legislation, rather than having it—

**Mr. Duguid:** We've entered into an interesting discussion, but my time is up, so I can't continue.

**The Chair:** Your time is up. Maybe Mr. Hardeman will leap on that opportunity.

**Mr. Hardeman:** Thank you very much for your presentation. First of all, I noticed you spoke to the timing of the bill. A lot of things could not be completed in time

for its implementation. There seems to be a supposition there that we know when it's going to be implemented and when it's going to be passed. I know it has been suggested that the government would like to have it passed before the end of the year, but with all the discussion we've had and all the presentations we've had, and there are so many things that the parliamentary assistant has suggested that they're still looking at, I expect it could take until the first part of next year before they get to the point where it's ready for final presentation to the Legislature.

I just wanted to ask about the part where you speak to the ombudsman. I'm reading the line "and we would counter that there is no evidence to support the need for a mandatory ombudsman for every municipality in the province." In fact, the way the bill is presently written, there is a mandatory ombudsman for every one in the province because, in fact, if you want to appoint one, you may; if you don't, the provincial Ombudsman automatically becomes the ombudsman for that municipality. If a citizen has a complaint and you don't have an ombudsman in the municipality, that citizen can ask the Ontario Ombudsman to look into it, according to this legislation, and deal with it. I'm just wondering if I have a different view than you do on that and if you could explain that to me.

**Mr. Bellchamber:** I think our understanding of the bill as it's drafted is that if the municipality doesn't appoint an investigator around the closed meeting issue, a complaint about closed meetings automatically defaults to the provincial Ombudsman. But the ombudsman for local government services for Bill 130 is an optional provision, so that's the only time that the Ombudsman automatically, by default, comes into play. We know that you've had recommendations or submissions that say there should be an ombudsman automatically for all of Ontario. We would suggest that we don't see the evidence to support that.

**The Chair:** Mr. Prue?

**Mr. Prue:** Yes, just the assertion here—this is more technical than anything—where you say that, "Municipal government already conducts a significantly greater deal of its decision-making in public than does either of the provincial or federal levels of government." Surely that has to do with the responsibilities for cabinet secrecy and responsible government more than anything. Apart from a caucus meeting, I don't think I've ever been to a private meeting in my five years here. I've never even participated in one.

**Mr. Robinson:** Yes. You're right: There are cabinet meetings and so on, which are not available to municipal government, which is why we end up doing some of our business in an in camera session. In our organization, we're not talking about people who want to do a lot of business in closed session, and we don't do a lot of business—if you ask me, "How many in the course of a year?" I would say it depends on what the issues are that year. For instance, in our town, we have had a significant brownfield problem with an old tannery and we've had to



get a lot of legal advice and so on on that. That has meant a lot of times we've had to go into a closed session and get that kind of legal advice, because if you don't get it in closed session, you're then telegraphing your next move to the person who has let this place become—who has walked away from it, it's contaminated and so on. I think everybody can appreciate that. But the whole idea of an orientation session I think is not an unreasonable request—to orient councillors new to the process. Many of them have been to very few council meetings. In order that they can really get an understanding of that and ask the kind of questions they need to ask and so on, I don't think that it is unreasonable to have an orientation session.

**The Chair:** Thank you very much for being here today. We appreciate your time.

1740

### ONTARIO HOME BUILDERS' ASSOCIATION

**The Chair:** Our next delegation is the Ontario Home Builders' Association: Mr. Johnston. Welcome. Thank you for being here today. We have your documentation in front of us. You have 15 minutes to speak. If you could identify yourself and the organization you speak for. If you leave time at the end, there'll be an opportunity for us to ask questions. After you begin speaking, I'll begin my timer.

**Mr. Brian Johnston:** Ms. Chair, members of the committee, good afternoon. My name is Brian Johnston and I am president of the Ontario Home Builders' Association. I am also president of Monarch Corp. Our company has built more than 30,000 new homes and condos across the province since the company started building in the province in the 1930s.

Monarch is a member of the Greater Toronto Home Builders' Association, the Home Builders' Association of Durham, the Hamilton Halton Home Builders' Association, the Ottawa Carleton Home Builders' Association and the Waterloo Region Home Builders' Association. I also serve on the board of directors at the Taron Warranty Corp.

I am a volunteer member of the association and appreciate the opportunity to speak to you today. Joining me on my right is Mike Collins-Williams, who is the manager of government relations at OHBA.

The Ontario Home Builders' Association is the voice of the residential construction industry in Ontario. It includes 4,000 member companies organized into 31 local associations across the province. Our industry represents 5.6% of the provincial GDP and contributed approximately \$25 billion to the province's economy last year.

OHBA is currently working with the Ministry of Government Services, the Consumers Council of Canada and the Taron Warranty Corp. to resolve the issue of delayed closings. I have had the pleasure of sitting on the delayed closings committee and, as we work towards a

solution, it is our objective to structure a new regime that will address purchaser concerns in a way that is not unfair to builders.

I want to sound one note of caution, however. During the deliberations, it became apparent that many of the delays imposed upon purchasers are not a result of builder delays; they are caused by municipal and provincial procedures that seem to operate in a vacuum. There almost seems to be a belief by some agencies that delays are okay because it's only an inconvenience to a builder or a developer, which of course is untrue in situations where homes are pre-sold to buyers. These concerns have been relayed to the Ministry of Government Services and the Minister of Municipal Affairs and Housing.

It is our new home purchasers who truly drive this industry, and we must always place them first and foremost in all of our industry and public policy discussions.

OHBA would appreciate your consideration with respect to a number of concerns with the proposed Municipal Statute Law Amendment Act.

Over the past couple of years, the development industry has been drastically impacted by this government. The greenbelt, Places to Grow, building code changes, OMB reforms, the Clean Water Act and other reforms have changed the way that we in the development industry do business.

I think it says a lot about our industry that we've been consistent in our position that we are in favour in principle of many of the legislative changes. We live here, and quality of life is important to everyone in our industry.

We've been equally vocal that while these changes are needed in order to manage and accommodate future growth, it is imperative that we offer Ontarians a broad choice in housing forms and allow them to make a choice based on their individual lifestyles.

OHBA initially became involved during the consultation period for Bill 53, the City of Toronto Act, which essentially served as a blueprint for Bill 130. Our primary concern with the City of Toronto Act was the additional taxation powers that were granted to the city. OHBA was concerned that the province had not addressed the fiscal imbalance between Toronto and Ontario and that the city would have no choice but to raise taxes on the business community and threaten the future economic prosperity of the city. While we have some sympathy for the city of Toronto, we don't believe their cause is helped by the fact that there has been no concerted effort to examine where spending is wasteful or duplicative. Has any one of us heard about city of Toronto cutbacks? Has any one of us heard of actual disposition of surplus assets, such as land, by the city or by agencies such as the TTC?

With that in mind, let me thank the government for listening to our concerns when Bill 130 was drafted. Citizens from across the province can be assured that municipalities will not have the power to levy additional taxes on the business community. Specifically, the residential construction industry is opposed to a municipal



land transfer tax being levied on top of the existing provincial land transfer tax.

OHBA is, however, troubled that, in the months following the introduction of Bill 130, the government has proposed a municipal business corporation regulation that would enable municipalities to potentially charge a backdoor tax on businesses through municipal corporation levies. We are concerned about the accountability of municipal business corporations and the potential political interference that may occur if politicians can sit on the boards of municipal business corporations.

OHBA questions the intent of the government in providing municipalities with the broad authority to establish business corporations for any service and/or facility that the municipality itself could provide and subsequently give those corporations the authority to use a levy for economic development services with a definition that includes transit, housing, land redevelopment, parking, BIA-type services and facilities for arts and heritage.

This rather open-ended proposal will create uncertainty for the business community and may reduce housing affordability across Ontario. OHBA recommends that municipalities not be granted the broad authority to create municipal business corporations with the power to charge levies of any kind.

It was our understanding that after over a year of consultations on Bill 53 and Bill 130, the government had clearly understood the grave concerns of the business community regarding broad municipal powers to levy additional taxes. We strongly believe that there is enough money in the existing system; it is a question of how the three levels of government distribute revenues and responsibilities. The government must never lose sight of the fact that there is only one taxpayer.

OHBA is concerned that the schedule in Bill 130 regarding business licences is too broad in the authority it will grant to municipalities. For the business community and for the residential construction industry in particular, business licensing is at best a tax grab and at the very worst an additional level of bureaucracy.

OHBA recommends that home builders be exempted from business licensing by regulation in Bill 130 because we are already licensed through the Tarion Warranty Corp. To frame this recommendation, I will provide you with a brief background on the Tarion Warranty Corp. and its involvement with the licensing and regulation of the home building industry in Ontario.

In 1976, the Ontario Ministry of Consumer and Commercial Relations established the Housing and Urban Development Association of Canada warranty program, which evolved into the Tarion Warranty Corp. Tarion is the licensing and regulatory body mandated to administer the residential construction industry in Ontario. Tarion guarantees the statutory warranty rights of new homebuyers and regulates new home builders under the Ontario New Home Warranties Plan Act. As the regulator of Ontario's home building industry, Tarion registers home builders, enrolls new homes for warranty coverage, investigates illegal building practices, resolves

warranty disputes between builders and homeowners, and establishes customer service standards and construction performance guidelines for the industry.

Tarion is not dependent on government funding, as it is financed entirely by builder registration renewals and home enrolment fees. Tarion is an unparalleled success, as confirmed by the 1.3 million homes enrolled in the program to date. By law, every builder working in Ontario must register and enrol all the homes that they build. In situations where a builder does not meet the established standards, Tarion has the authority to step in and resolve the issue and to deregister or take legal action against the offending company. Tarion is in the best position to provide the necessary protection to both consumers and builders and set the standards by which the home building industry must abide. Furthermore, it is our submission that as Tarion is successfully discharging its mandated functions, further duplication of licensing for home builders by a municipality is redundant and unwarranted. As the Tarion Warranty Corp. currently governs and licenses home builders in the province, we recommend that the province pass a regulation to exempt home builders from being subject to business licensing.

Here's our prediction: If the government doesn't do this, municipalities will establish licences as a means of raising revenue. Then suddenly someone will decide that a bureaucracy is required to monitor compliance with these licences, net revenues will decline, and we'll be faced with another level of bureaucracy that duplicates what Tarion is doing already.

OHBA remains concerned about the fiscal imbalance between municipalities and senior levels of government. Municipalities are faced with responsibilities that extend beyond their ability to raise revenue. OHBA believes that social programs are a provincial responsibility and should not be funded through property taxes. We are a strong supporter of infrastructure investment, and with few financial resources available, municipalities are not making adequate investments in this sector. Let us say this: Given a choice between user-pay infrastructure such as toll roads or none at all, we will always support user-pay infrastructure. Despite its critics, Highway 407 has been successful in delivering the goods. Furthermore, as local politicians are reluctant to face voters following property tax increases, they are always knocking on our door for funding by increasing development charges, building permit fees, planning fees and section 37 agreements. Is it just me, or is it not true that the nicest city halls are located in the fastest-growing communities?

#### 1750

OHBA strongly supports the provincial-municipal fiscal and service delivery review aimed at improving the delivery and funding of municipal services. It is our hope that the review will assist to correct the fiscal imbalance and assist to reduce municipal taxation pressure on the business community. The voting public and all political parties should have full disclosure of the various options presented by the review.

Finally, let me touch upon something that plagues our industry and we're having trouble finding anyone to



oppose us on; that is, the act of illegal building. In this province, any new residential building must be done by builders registered with Tarion. Through various means, either legally or illegally, there are approximately 8,000 houses each year that fall outside the purview of Tarion. Accompanying some of these starts are unreported taxable income, unremitted GST and PST, unpaid WSIB premiums and unsafe building practices.

We have approached the Minister of Municipal Affairs and Housing to suggest that a task force be set up to study this problem and propose solutions. We are pleased by the positive response we received and hope to have this task force up and running in the new year.

In closing, I'd like to reiterate that, as the engine that drives the provincial economy, the residential construction industry pours billions of dollars into municipal, provincial and federal coffers. It is in the best interests of all Ontarians that the provincial government work with us to ensure that the new housing and renovation industries continue to thrive.

Ms. Chair, members of the committee, I would like to thank you for your attention and interest in our presentation. We look forward to hearing any comments or questions you may have.

**The Chair:** You've left just over a minute for everybody to ask you a question, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. First of all, I wanted to commend you for your position on the provincial-municipal realignment study as I agree with that totally.

I wanted to ask a question quickly on page 3 of your presentation: "We are concerned about the accountability of municipal business corporations and the potential political interference that may occur if politicians can sit on the boards of municipal business corporations."

**Mr. Johnston:** This issue just kind of popped up—

**Mr. Hardeman:** That's the first time I've heard that in all the committee hearings we've had so far. I'm just wondering what—

**Mr. Johnston:** I think it's what we don't know that's concerning us, as opposed to what we do know. It appears, based upon our reading of it—and maybe, Michael, you can comment further. As we went through the regulation, it appeared that there was this sort of hidden ability for municipalities' subsidiary corporations to impose levies on the development industry. Is that a fair statement, Michael?

**Mr. Michael Collins-Williams:** Yes. Essentially we're concerned that if politicians are on municipal business corporations, there could be some interference. Anything that we've seen on the regulation is fairly preliminary, so we just wanted to raise the flag here that there would be concerns of political interference, especially if there are going to be levies attached on to some of the activities that they're doing.

**Mr. Hardeman:** I wonder, Madam Chair, if I could ask the committee, not the delegation, if we could get some information on that. This is the first time I've heard

that and I find it concerning, so I wonder if we can get an explanation from legislative research as to what this section actually does.

**The Chair:** Thank you. Mr. Prue.

**Mr. Prue:** I'm curious. On page 4, you don't want municipalities to set up corporations, or you question them setting up corporations, and you include a whole bunch. I think the city of Toronto has a corporation already for all of these. Transit: They have TTC. Housing: They have the housing authorities. Land redevelopment: They have Tedco. Parking: They have the Toronto Parking Authority. BIA-type services: They're partners in all of the BIAs already. Facilities for arts and heritage: They already have those as well. I'm curious why you wouldn't want them to set those up, when they already have them.

**Mr. Johnston:** No, we're not advocating the dissolution of all those organizations. Our concern is the ability of these corporations to levy—and let's call it a development charge. Just to be clear, it's not 100% crystal clear that those are the implications of the regulations, but we're raising red flags because our read of it was, this doesn't look like something we want. For example, we don't want municipal corporations, whether they're constituted today or going to be constituted, levying development charges or some other type of levy on the development industry because they've been given the power to do so. It's not the corporations themselves we have a problem with.

**Mr. Prue:** Okay. Thank you.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** I think a lot of the concerns being raised by a variety of sectors are probably based more on fear of the unknown, as you said earlier, than fear of the known. There are some unknown entities to this. We're taking a permissive rather than a prescriptive approach with municipalities, which does give them the ability to reach out and do certain things in their community. But one thing I can assure you of, and I think it's a very important point, is that the licensing ability being given to municipalities is contingent on cost recovery, so the concerns expressed in your presentation about tax grabs and that kind of thing—it really should not take place. Municipalities may have an opportunity to look at certain elements of businesses and say, "Well, there's a public interest to our regulating it in one way or another," but I've heard no municipality talk about the building industry in that respect. I guess my question would be, have you heard any speculation about that?

**Mr. Johnston:** The issue came up, and we caught wind of this, obviously, probably six or eight months ago, and we actually had addressed the minister about this. He told us, "Go talk to the mayor"—the mayor of Toronto specifically—"and ask him what his position is on this issue. If he wants us to withdraw it, we'd love to hear about that." Well, he did not agree to our request to make a request to withdraw it.

Let's be honest. I suspect our concern is the city of Toronto, which has obviously got a very large fiscal



deficit. They're going to be looking for ways to raise money. Why not license the home builders? We're saying, "We're already licensed; we're already being regulated by Tarion. Leave us out of it, thank you very much."

**Mr. Duguid:** Well, just again the assurance: Even in the City of Toronto Act, they don't have the ability to go out and get revenues by licensing home builders. It would have to be something that would be a service to be provided that would have to be cost recovery, but—

**Mr. Johnston:** But I guess we would bear the cost.

**Mr. Duguid:** —the city of Toronto does have the ability to tax in a variety of different areas which aren't in this particular bill.

**Mr. Johnston:** Right.

**The Chair:** Thank you very much for being here today.

### CITY OF WOODSTOCK

**The Chair:** Our last delegation today is the city of Woodstock. Welcome. Make yourself comfortable, and as you settle yourself down, before you begin, if you could announce who you are and the city you speak for, for Hansard. Once you begin you'll have 15 minutes, and if you leave time at the end, there'll be an opportunity for us to ask you questions. We have your handout in front of us.

**Mr. Michael Harding:** Thank you, Madam Chair. I'm Michael Harding, the mayor of the city of Woodstock. To my immediate right is Paul Bryan-Pulham, who is our chief administrative officer for the city of Woodstock, and to his immediate right, our city engineer, David Creery.

What you have in front of you is a rather large document. Before I begin, if I can just go through what is in here, there are four appendices identified in the table of contents, A, B, C and D, which are supporting documents to the position we're going to be presenting today.

It's great to be before the standing committee on general government. I want to thank you for the opportunity given to us to present several items for your consideration during the deliberation of amendments to the Municipal Act.

We want to also take this opportunity to applaud the government for its commitment to seek improvements and changes through the review of the Municipal Act, because the government, like us, recognizes that this act is in fact a living document that needs to be reviewed to enable municipalities to adequately respond to an ever-changing environment. Certainly in the city of Woodstock and the county of Oxford that has been the case in the last little while. But we think that there are certain matters that require your attention.

In the page marked "Introduction" are the issues we're asking specifically about. Those are the four items that are before you related to the sphere of jurisdiction. Our submission involves four areas of interest to our city and

our city council. One is of a technical nature, which can be addressed briefly, and three are related to section 11 and governance. Three of the four issues we're going to be talking about have the support from the county of Oxford in the form of resolutions, which you will find contained in the document.

Our presentation today actually focuses on issues related to government as a lower-tier municipality, and one technical item, as I've said. Firstly, the technical matter: In the appendices we'll call B1(a), there's a resolution from Oxford county, originally proposed by the city of Woodstock, for clarification of the definition of waste management. This item is important for clarification within the existing framework of the act that you're currently reviewing and for an understanding, certainly, of our request before you today.

### 1800

Our governance issues all lie within section 11 of the Municipal Act, which you'll find under "Spheres of Influence" in our appendix A and, in our mind, reflect provisions of the former County of Oxford Act, which were simply transferred to the new act. In all cases, we submit to you that we are requesting consideration of amendments which reflect practices that were in place for approximately 25 years after the county was restructured and were later altered, primarily as a result of provincial initiatives, in 1999.

The county and the lower-tier municipalities responded to what they saw as an implied threat of provincial direction by the government of the day to move to a single-tier system. It resulted in a review of the existing two-tier system and generated changes that were not likely to have happened otherwise. Until that pressure, the lower tiers were in control of their needs. While in hindsight one might argue that the changes were a rush to judgment about resulting efficiencies, no one could have predicted or anticipated the future marketplace forces that are today creating unnecessary barriers, limiting our city's ability to respond. That is why we are here before you today.

In the matter of waste collection, the County of Oxford Act, enacted in the mid-1970s, assigned responsibility for waste disposal to the county of Oxford, with waste collection the responsibility of the lower tier.

As previously noted, in 1999 that implied threat of a provincial direction to create a single-tier solution in Oxford county resulted in a service review. By the triple majority process, waste collection was moved to the county. The county of Oxford did not support this change; however, the city managed to retain, by agreement, the ability to continue to be the service provider, but under a new threat from the county of full assumption of service. Council strongly believes that local authority is important in this area of service that is highly valued by our residents. In the city services survey, for instance, in 2002, waste collection ranked number two in the most important services category and achieved a 92.7% "satisfactory and excellent" rating from our respondents, the highest of all services rated.



The city of Woodstock strongly holds the position that the authority was not properly transferred and has a strong legal opinion—and that legal opinion is in the appendix—that we have retained the right to locally operate waste collection services. City council passed a resolution to assume the operation by July 1, 2007, based on the opinion, which is, of course, appended to this brief.

We are not asking the committee or the government in any way to adjudicate this legal issue, but the fact that there are conflicting opinions on the sections of the new act that carry forward bylaws, resolutions and sections of repealed authorities suggests to us that the committee should carefully review the applicable sections and make recommendations to clarify the intent to minimize as much as possible costs to the municipalities in terms of legal challenges. We are requesting an alternative to the present wording of the assignment of responsibility to clarify what constitutes disposal, collection and recycling.

Other lower tiers support the local authority option and, in recognition, the county sought a compromise by offering to negotiate agreements that are acceptable to it and the lower tiers who so requested this option.

While encouraged, we believe the best option is to return to the original premise of the restructured Oxford county and amend section 11, table item 3.

The amendment suggested is to divide the item waste management and expand the definitions, as earlier noted, for Oxford county to retain an exclusive assignment for disposal sites and disposal facilities, including transfer sites, and that waste and recycling collection and recycling processing are a non-exclusive assignment. The current sphere only references waste collection in the context of an exception to the exclusive assignment but with no definitions of waste collection.

This recommendation was supported by county council and forwarded to the ministry on August 15, 2006, and may have been presented to this committee in an earlier presentation by the county. A certified copy of that resolution is enclosed.

The third area is on economic development services. The County of Oxford Act, enacted in the mid-1970s, gave responsibility to the county for all matters related to economic development. In reality, the county of Oxford never played a role in the area, save and except a small financial contribution to urban lower tiers engaged in this activity. The city of Woodstock maintained and paid exclusively for all facets of economic development, including the promotion of the municipality, business retention activities and the purchase and development of industrial lands for sales purposes. The county did not exercise any authority, save and except to pass bylaws permitting the city and the lower tiers to continue the activity.

We respectfully request consideration of an amendment of section 11, table item 10, to change economic development services from an exclusive assignment of the county to a non-exclusive assignment in its entirety

for both sub-spheres. County council again supported this change, as they may have presented to you in an earlier presentation. Again, copies of those resolutions are contained in the appendices.

Item number 4 has to do with water distribution and waste water collection. By far, we believe that this is perhaps the most contentious of our recommendations to this committee, and that is a request to amend section 11, table item 4, to provide for water distribution and waste water collection on a non-exclusive basis. We wish to emphasize that we are not requesting any amendment to the exclusive right of the county for water supply and waste water treatment services, including ancillary works directly related to the supply of potable water and the treatment of waste water.

The County of Oxford Act, enacted in the mid-1970s, assigned ownership of all the water supply and distribution assets to the county, along with all the waste water treatment and collection assets. We estimate the value of those assets transferred, in today's terms, to be in excess of \$50 million, paid for solely by the taxpayers of the city of Woodstock.

The County of Oxford Act was a local solution derived at the time to avoid a forced regional government system. The county immediately transferred all responsibility for water supply and treatment and waste water collection and treatment back to the lower tier by agreement. What that meant was that for approximately 25 years the city operated, maintained and constructed all such facilities, payment for the same being made exclusively off the city tax base and, in the case of water, the connected water user in the city. In other words, while we looked like a region to the government of the day, the status quo in terms of responsibility for construction, maintenance, financing and all the facets of waste water collection and treatment and water supply remained local.

The deregulation of the electricity sector caused the elimination of the public utilities commission which had operated the water supply and distribution system for the city of Woodstock, essentially subcontracted by the city. Once again, water supply operations were assumed by the county in its broad mandate for seeking out water supplies and protection of groundwater. Staff and maintenance responsibilities for the distribution system were integrated into our city's public works operations, a responsibility that continues to this day.

Both the water distribution system and the waste collection system impact not only the local connected population but are a significant component in the planning for residential, commercial and industrial development, all of which are a local responsibility in conformance with the official plan policies. Increasingly, from our perspective, other county priorities are restricting the ability of the city to respond to new development opportunities on a timely basis and our ability to coordinate infrastructure renewal projects.

We understand the substantial challenges presented to the county with the new regulations, post Walkerton, and



believe this has stretched the limits of their ability to respond and prioritize to meet the needs of an urban community in a strong growth situation. We have the technical abilities to manage the system as we in fact are doing much of what is required now. In addition, we have a strong reputation for timeliness of development approvals, improving our competitive edge. City council also believes that we should be able to determine locally and within proper planning practices where to direct and prioritize our efforts. We have continually demonstrated that we can respond quickly to opportunity and are more willing to invest in our future than we believe the county is, given their other challenges.

1810

In summary, we request your due consideration of our proposed amendments to the act. You will find that our proposals are not inconsistent with upper- and lower-tier relationships in other two-tier systems in this province. We strongly believe that our requests will enable the city, with its technical and professional resources, to deliver service to our residents and to the industrial and commercial sectors in a timely manner consistent with the existing official plan and provincial planning policy.

Various appendices, as I've noted before, have been attached that will expand our position from both a current and historical perspective. We also suggest that the staff of the Ministry of Municipal Affairs and Housing and the Ministry of Economic Development and Trade could offer valuable additional commentary as to the city's progressive yet responsible response to growth and economic development opportunities, which can be locally, provincially and nationally significant.

Failure to address this matter can impact our ability to respond to marketing opportunities in a timely manner, which affects not only the health and vitality of our city but also the county, as our assessment base now contributes one third of the county's tax revenue.

Thank you very much for the opportunity to come before you.

**The Chair:** You've left a minute and 30 seconds, so if there's a really quick question from each party. I will begin with Mr. Prue. You've got 30 seconds.

**Mr. Prue:** I'm going to pass.

**The Chair:** Okay. Mr. Duguid.

**Mr. Duguid:** Just a really quick question: You've accomplished some things in terms of service migration through the triple majority. I guess that's what you're talking about: service migration in some of these areas. Considering that you have the county onside for three out of the four, is there a barrier that I'm not aware of? I know it's always a pain to have to go through that triple majority, but it looks like for three out of the four areas, you would probably have it anyway. Is there something that I'm not aware of that would make that too challenging for you?

**Mr. Harding:** Apart from the culture, why don't I turn that question over to Paul Bryan-Pulham.

**Mr. Paul Bryan-Pulham:** Thank you for the opportunity to respond. I'll just expand a little bit, and very briefly, on Mayor Harding's comment. The challenges faced by the county in other areas have directed its priorities elsewhere, and, post-Walkerton, I understand that fully. In terms of the thinking of the group at county council—I can't, of course, speak for county council; Mayor Harding is a member of county council—in our estimate, it impacts how that kind of a sphere is looked at. It's changed from a time when the city managed and paid for, and were fully responsible for, priorities in the city to the county council looking beyond, and we do have concerns that that will impact the triple majority process. In their thinking, that perhaps would affect their ability to respond elsewhere to the challenges that they face in the smaller communities surrounding Woodstock.

**The Chair:** Thank you. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much, Mr. Mayor and other members from Oxford. It's quite a pleasure. I'm in my 12th year here, and in the matter of a week, we've had two delegations from Oxford, the first two since I've been here. So thank you very much for coming in.

It's very important that on three of the four issues, the local solution, which I think was mentioned, seems to be working. What you're really looking for is not to necessarily mandate the solution you've found for the future, but in fact that you want to keep it open so that it could be changed as you go along, that Woodstock can keep doing the garbage collection and recycling without the county saying, "It's our jurisdiction. We're going to do it a totally different way." Is that true?

**Mr. Harding:** Yes. What we're asking for is recognition. We're not asking to devolve the relationship. Each and every one of these is asking for non-exclusive. It doesn't presume one or the other. It's just putting something into our tool kit, levelling the playing field a little bit to allow a local tier to determine what structure it needs in place. MPP Hardeman, you will know that things are happening quickly in one centre and less quickly elsewhere, but there's this great desire to keep everything the same. What we're saying is that it's not really possible. In fact, in each of these four recommendations, there is a change to non-exclusive. So the county recognizes some; I guess we might be a little ahead of the curve as a result of who we are, as opposed to a rural jurisdiction.

**The Chair:** Thank you, Mayor Harding. We appreciate your thorough and detailed presentation today.

**Mr. Harding:** Thank you very much.

**The Chair:** Committee, this brings our hearings to a close for the day. Our researcher, Mr. Richmond, will be attempting to provide our committee with as much of an up-to-date summary as he can provide by Wednesday.

This committee now stands adjourned until 4 p.m. on Wednesday, November 29. A reminder that we're changing rooms: We'll be in committee room 1. We're adjourned.

*The committee adjourned at 1815.*











## CONTENTS

Monday 27 November 2006

<b>Municipal Statute Law Amendment Act, 2006, Bill 130, Mr. Gerretsen / Loi de 2006 modifiant des lois concernant les municipalités, projet de loi 130, M. Gerretsen .....</b>	<b>G-931</b>
Ontario Federation of Agriculture .....	G-931
Mr. Paul Mistele	
Mr. Peter Jeffery	
Mr. Arend Kersten .....	G-933
City of Kitchener .....	G-936
Ms. Lesley MacDonald	
Hamilton Chamber of Commerce .....	G-939
Mr. Dan Rodrigues	
Mr. Len Falco	
Airport Taxicab (Pearson Airport) Association .....	G-942
Mr. Karam Punian	
Ontario Municipal Administrators' Association .....	G-944
Mr. Steve Robinson	
Mr. Nigel Bellchamber	
Ontario Home Builders' Association .....	G-947
Mr. Brian Johnston	
Mr. Michael Collins-Williams	
City of Woodstock .....	G-950
Mr. Michael Harding	
Mr. Paul Bryan-Pulham	

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### Chair / Présidente

Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)

#### Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)  
Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)  
    Mr. Kevin Daniel Flynn (Oakville L)  
Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)  
    Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell L)  
    Mr. Jerry J. Ouellette (Oshawa PC)  
    Mr. Lou Rinaldi (Northumberland L)  
    Mr. Peter Tabuns (Toronto–Danforth ND)  
Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### Substitutions / Membres remplaçants

Mr. Ernie Hardeman (Oxford PC)  
Mr. Phil McNeely (Ottawa–Orléans L)  
Mr. Michael Prue (Beaches–East York / Beaches–York-Est ND)

#### Clerk / Greffière

Ms. Susan Sourial

#### Staff / Personnel

Mr. Jerry Richmond, research officer  
Research and Information Services

16  
23



G-40

G-40

ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 29 November 2006

# Journal des débats (Hansard)

Mercredi 29 novembre 2006

**Standing committee on  
general government**

Municipal Statute Law  
Amendment Act, 2006

**Comité permanent des  
affaires gouvernementales**

Loi de 2006 modifiant des lois  
concernant les municipalités

Chair: Linda Jeffrey  
Clerk: Susan Sourial

Présidente : Linda Jeffrey  
Greffière : Susan Sourial





### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 29 November 2006

Mercredi 29 novembre 2006

*The committee met at 1601 in room 151.*MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT DES LOIS  
CONCERNANT LES MUNICIPALITÉS

Consideration of Bill 130, An Act to amend various Acts in relation to municipalities / Projet de loi 130, Loi modifiant diverses lois en ce qui concerne les municipalités.

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The standing committee on general government is called to order. We're here today to continue public hearings on Bill 130, An Act to amend various Acts in relation to municipalities.

Before we begin to hear from the first presenters, members will have at their seats a copy of the written submission sent in by the Ombudsman. He has requested that his submission be entered into the oral record of the proceedings. This can only be done if a member of the committee reads Mr. Marin's submission out loud during the committee proceedings. It cannot be deemed read into Hansard.

I would need unanimous consent of committee for this to be done, and for someone to volunteer to read it. Do I have unanimous consent?

Mr. Hardeman? Do we have unanimous consent? Do I have nodding or not?

**Mr. Brad Duguid (Scarborough Centre):** I'm sorry, I was in another conversation.

**The Chair:** You weren't listening?

**Mr. Phil McNeely (Ottawa—Orléans):** We were talking about another topic, actually.

**The Chair:** Okay. I will read it again.

You have a copy of a written submission by the Ombudsman. You will recall that he asked for additional time and he was denied that time by the committee. Now he has requested that his submission be entered into the oral record of the proceedings. It can only be done if a member of the committee reads his submission out loud during the committee proceedings. It cannot be deemed as having been read into Hansard.

I need unanimous consent of this committee in order for this to be done and a volunteer to read it. Is there unanimous consent?

**Interjection:** No, no.

**The Chair:** Mr. Hardeman.

**Mr. Ernie Hardeman (Oxford):** Madam Chair, recognizing that we don't have unanimous consent to read it into the record—I know that as we get into clause-by-clause, I will need that information on the record to have further debate on the amendments in clause-by-clause—I can assure the Ombudsman that we will read it into the record as the time approaches.

**The Chair:** Thank you, Mr. Hardeman. So there is no unanimous consent.

## MUNICIPALITY OF GREENSTONE

**The Chair:** We'll move on to our public hearings. I'd like to welcome our witnesses and tell them they'll have 15 minutes.

Our first presenter today is the municipality of Greenstone, Mayor Michael Power. Welcome. Please make yourself comfortable. I know you've been here before, but I'll go through the drill. If you want to pour yourself a glass of water, please do. You will have 15 minutes after you have identified yourself and the organization you speak for. If you leave time at the end, there will be an opportunity for us to ask questions. So whenever you're ready.

**Mr. Michael Power:** Thank you very much, Madam Chair. It is indeed a pleasure and an honour to be able to appear before you today. I know you have been very, very busy in dealing with this.

My name is Michael Power. I'm the mayor of the municipality of Greenstone, and I am the president of the Northwestern Ontario Municipal Association, which represents every organized municipality in the great northwest of this province.

I want to tell you that generally we're satisfied with the work that you have done on this bill and with the intended outcomes. But before commenting on specific aspects of the bill, I would urge this committee to do two things. Firstly, it should commit to ensuring that both the City of Toronto Act and the improved Municipal Act are enacted in order to come into effect on January 1, 2007. Synchronization will allow all of Ontario's other municipalities to be equipped with the powers to better manage our 445 municipal corporations and the communities we serve right across this great province of ours. This bill, however, does not solve the biggest challenge facing the municipal sector; that is, the \$3-billion gap. Unless



we can undo the downloading of the 1990s, municipal governments will remain fiscally and financially vulnerable. I know that together, the municipal order of government and the provincial order of government can solve this.

Finally, I would be remiss if I did not remind this committee of the wider context facing many northern and rural municipalities in Ontario. Ontarians in many rural and northern communities are facing tough times. There are many in this room who are well aware of that. The combination of low commodity prices, high energy costs and increasing competition from developing nations is forcing many manufacturers to relocate or close their mills. These communities are counting on the government of Ontario to take a leadership role in developing solutions to stem the current crisis and to ensure a lasting legacy of sustainable economic development. While cities may be the engines of growth in the new economy, northern communities are key to providing necessary resources for these cities to survive and to thrive. They also play an increasingly vital role in environmental stewardship due to the stresses created by population growth, sprawl and climate change here in this part of the province.

Let me focus on a few matters in this large bill in the remaining time.

We in the north support the new broad authorities, because we believe they will help municipalities govern by enhancing their ability to respond to local issues. We support the provision that these new broad powers must not only be applied to the rest of this act, but to any other legislation that governs municipalities. This reflects how the courts have been interpreting municipal powers both in Ontario and across Canada.

Bill 130 must remove section 451 of the Municipal Act, which gives override authority to the province on the basis of provincial interest. This is inconsistent with the principles of the act's review. Restricting the use of the general powers by allowing cabinet to impose limits via regulation runs counter to the goal of recognizing municipalities as a responsible order of government. This will cause uncertainty for municipalities and could very well limit innovation. The province must exercise restraint and not get involved in purely local matters if the proposed changes are actually to achieve their desired outcome. The province should and can define its interest up front and insert this into the legislation. Without stated provincial interests, there remains a very large hole in the bill.

As fellow politicians, you understand how important it is to be able to properly understand an issue before you debate it in public. Municipal councillors need the opportunity to do their homework and to ask those questions as well. This bill will allow such discussions to occur outside of a formal council meeting. Learning about a matter is critical before you enter any discussions. You know this first-hand from your own caucus meetings and experiences.

Where a citizen of the community or a taxpayer believes council has not complied with the open/closed

meetings provisions, they should be able to seek a consideration, but the provision is very open-ended. Any person anywhere can trigger this, without limitation. The committee should consider scoping who can trigger such an investigation.

#### 1610

The bill proposes that a municipality can appoint a municipal ombudsman. It then enables any person to direct an ombudsman "to investigate any decision or recommendation made or act done or omitted in the course of the administration of the municipality, its local boards and such municipally controlled corporations as the municipality may specify." This, members of the committee and Madam Chair, lacks the rigour necessary to prevent a multitude of frivolous and vexatious claims. As we know, in the Ontario Municipal Board, that is in place to allow the dismissal of frivolous and vexatious claims.

As with the closed meeting-investigator provision, a claimant does not even have to be a resident of the municipality in question to launch an administrative investigation. If this committee does decide to maintain this administrative investigation provision, it should amend it to be similar to the FOI legislation. That legislation was amended, as you all remember, after a rush of claims against a number of police forces. The addition of a minimal fee system such as that for FOI would be reasonable.

We strongly urge the committee to also clarify that the application of section 223.13 does not apply to deliberations and proceedings of council or any committee of council. This would be in keeping with the scope of investigation contained in the Ombudsman Act for the province. I know you don't want to be trying to second-guess decisions of councils or committees of councils across this province.

Bill 130 contains streamlined provisions for policies on a wide variety of matters. The proposed provisions are more flexible and more responsive to existing internal operating procedures and local need. However, the provision in subsection 270(1) requiring municipalities to adopt policies to "ensure that the rights, including property and civil rights, of persons affected by its decisions are dealt with fairly" should be removed. This is already well covered by both the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code. There is no precedence for this in North America. We do not really understand what it would achieve that has not already been provided. Simply referring to other legislation does not provide a policy benefit.

With new councils across Ontario just about to take office, municipalities will need time to develop new or to amend their procedural bylaws in order to implement this bill. Therefore, Madam Chair, we're recommending to you and to the members of the committee that the Legislature have a staged proclamation date for the policy provision. We suggest a year for the transition for all the policies and the Ombudsman investigator provisions. These require good planning, and, as you know, good planning generally gets good outcomes.



We believe Bill 130 represents positive steps toward recognizing municipalities as mature partners in providing good governance to the citizens of Ontario. Northern communities will benefit from the increased autonomy and ability to innovate. However, there is a need to recognize the higher costs to deliver programs in northern communities, as well as the reality that some policies might work very well in southern and urban Ontario but not so well in the rest of the province. Certainly, as this government has been very clear in stating, we ask you to remember that one size does not fit all.

I want to thank you for your efforts and tell you that on behalf of all of the municipalities in northwestern Ontario, we appreciate the work you've been doing and certainly look forward to the passage of Bill 130, with the suggestions we have made to you today.

**The Chair:** Thank you, Mayor Power. You've left exactly two minutes for every party to ask you a question, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much, Mr. Mayor, for the very thorough presentation. I just very quickly want to refer to section 451, the ability of the minister to override fairly much everything in the legislation in the present act and in the amendments, and how that relates to, as you've said in your presentation—this takes the authority away, so it really doesn't give as broad permissive powers as the intent of the bill would imply. But going on, then, to the extension of more in camera council meetings, at the start of the bill, this bill and these amendments were all about transparency and accountability. How would more closed council meetings translate, in your opinion, to more accountability and transparency for the citizens of the municipality, not the members of council?

**Mr. Power:** As you know from your own experience in local government, Mr. Hardeman, councils are very open and transparent in Ontario; they always have been. They have never really needed legislation to encourage that. Our citizens, as you know, are very engaged in our local government. But there are areas where it probably is better: if you're doing a training session; if you're doing a debriefing on some issue that has come forward to members of council; if you're doing a legal briefing. For example, in order to provide the appropriate briefing for council on this bill and to do it in an open public meeting, we're going to ask citizens to sit there for about two and a half hours. In most parts of this province, councils are not full time. They meet in the evenings. They have a lot of business to do. So we're not saying to you that we're going to be conducting all this business in camera and deprive citizens of their ability to have their input; we're saying we need to use some common sense and put in place these kinds of things, and that's why we've asked for that.

**Mr. Michael Prue (Beaches-East York):** Same question: What is to stop a council from exercising or not exercising the correct discretion, going into camera, not making a final decision but cementing the deal? I'm thinking here about citizens' concerns in some municipalities where it is alleged to happen regularly, where

councils will go in, talk about a development deal, not make any final decision, but come out—somebody will move the motion, somebody will second it, it will all be done, it will all be over in five minutes. It will involve millions of dollars and leave the citizens furious. What's to stop this?

**Mr. Power:** I disagree with you, Mr. Prue, that this goes on now, that all of these things happen behind closed doors.

**Mr. Prue:** You don't know of municipalities where this happens?

**Mr. Power:** It certainly has not been my experience.

**Mr. Prue:** No, not in yours, but what about some of the development communities around Toronto where this is alleged to happen on a constant basis, where there's a huge fight in the courts going on just north of Toronto today?

**Mr. Power:** That's the key word in your statement: "alleged" to have happened, "alleged" to have occurred. As you rightly are saying, it hasn't been proven. I don't think that the provision of this bill is any different and provides the ability for that to happen to the detriment of citizens. We are saying to you that in terms of 451, that override is not needed and should be removed. You may have all kinds of stories that are brought to you that may not have any foundation until they're proven in a court of law. So to get into what-ifs—I think this is not the right place to do it.

**Mr. Duguid:** I doubt there's time for all my questions, but I'll do them as quickly as I can. First off—

**Mr. Power:** Just say yes to them all.

**Mr. Duguid:** Looking at subsection 270(1), the property rights and civil rights issue, I can tell you we're taking a very close look at that. We've heard that from a number of parties, so I can tell you we're looking seriously at that.

Getting back to the confidential meeting question, is the main goal of municipalities at this point briefings and education sessions? Is that really the main barrier? The real estate and the legal and all of that are already permissible. Would you say that's probably the primary goal?

**Mr. Power:** It is. If you want to really take it to its nth degree in the current system, if two members of council happen to be in Tim's at the same time for coffee—I know we're not supposed to give commercials here in the Legislature, but anyway—that could conceivably be deemed as a council meeting and therein conflict, because that may be where an issue comes up, something comes up: "What do you think about...?" This will avoid that kind of thing. But the key element is in terms of training, briefing, moving forward, so that councillors appropriately have the resources and the knowledge to make good decisions.

**Mr. Duguid:** Okay. Thank you.

**The Chair:** Thank you, Mayor, for being here today.

**Mr. Power:** Thank you very much.



## ONTARIO BAR ASSOCIATION

**The Chair:** Our next delegation is the Ontario Bar Association. Welcome. I have two names here as the delegation. Obviously you are not two people. If you could identify yourself and the group you speak for. You will have 15 minutes, and if you leave time, there will be an opportunity for us to ask questions about your delegation. We do have your submission in front of us.

**Mr. John Mascarin:** Thank you, Madam Chair, and good afternoon, members of the committee. My name is John Mascarin. I'm a solicitor with Aird and Berlis in Toronto. I am also a member of the executive of the municipal law section of the Ontario Bar Association. This afternoon, Mr. David Potts, who is the city solicitor for the city of Oshawa, was to have been here with me, so you would have had the ying and yang of the private and the public sector representation. Mr. Potts is unavailable. I believe you've already heard from him in any event. But I will be addressing one discrete issue with respect to the proposed legislation, Bill 130, on behalf of the OBA.

Let me say first and foremost that the OBA supports the government in the proposed amendments in Bill 130 to give more permissibility, more autonomous power, to municipalities. Our difficulty resides in the province having already enacted the City of Toronto Act, 2006, which you did on June 12. I listened to the Minister of Municipal Affairs twice that week. He made speeches indicating the uniqueness of the city of Toronto and made a very compelling argument that the city of Toronto should receive some enhanced, additional, autonomous powers than other municipalities.

The difficulty resides in the fact that three days after the City of Toronto Act was enacted, Bill 130 was introduced, and, as the explanatory notes to Bill 130 make manifestly clear, the purpose of the amendments is to give the exact same powers to all municipalities in the province that the city of Toronto got, with some exceptions, and I do highlight the major ones on page 2 of our submission.

In fact, I've written substantially on the City of Toronto Act and I was quite surprised at the position that it took, but it's there and it does give additional authority to the city of Toronto. But this, in my submission, will lead to difficulties of statutory interpretation. The City of Toronto Act contains a preamble and it contains a very different set of purpose provisions at the beginning of the act than the Municipal Act, 2001, is proposed to do.

The courts, in a series of decisions that go back to Madam Justice McLachlin's decision in 1994 in the Shell property and city of Vancouver case, have said that the proper way to interpret municipal statutes, municipal powers, is to give municipalities a deferential, generous treatment and approach. Municipal legislation is to be interpreted broadly and purposively within its context. There's also a principle of law as to statutory inter-

pretation—in Latin, the term is “*in pari materia*”—which says that different statutes similarly situated with similar purposes but enacted at different times are to be interpreted similarly.

The problem is that there's a distinction of purposes between what is proposed in the Municipal Act, 2001, and what is already in the City of Toronto Act, which seems to not coincide with what the judiciary has been saying in the way statutes are to be considered and applied and analyzed. The proper legislative approach is in jeopardy here because it's very unclear what the provincial intention is.

At page 4 of our submission, there are three options highlighted. Let me say that option number 3 is our recommended option. It's at the bottom of page 4. Option 3 recommends that the City of Toronto Act, 2006, be repealed and replaced with a City of Toronto Act that only addresses the specific and precise powers in which the city of Toronto is differentiated from other municipalities in the province.

This is the manner in which Bill 51, the Planning and Conservation Land Statute Law Amendment Act, addresses the Planning Act with respect to the city of Toronto. It specifically says, “These sections do not apply to the city of Toronto,” and they are dealt with in a different statute. It is our recommendation that that is the preferred option in the way the province should be treating the legislation and it would ensure that there's no difficulty of interpretation between similar provisions in the City of Toronto Act and in the Municipal Act, 2001, as amended.

I thank you for the opportunity to speak here on behalf of the OBA, and I'd be happy to answer any questions.

**The Chair:** You've left three minutes for every party, beginning with Mr. Prue.

**Mr. Prue:** Thank you very much. Just a question of logistics. This government passed the City of Toronto Act in June of this year. By August, they'd already amended it; they took out significant powers granted to the city of Toronto. What you're suggesting now is that they abrogate, they get rid of, the whole law save and except those sections that are unique. How realistic an option do you think this is to this government? I can't imagine, sitting here in opposition, that this would happen in 100 million years, but I'm asking you: This is your preferred option. How realistic is that to these guys over here?

**Mr. Mascarin:** Mr. Prue, I'm not sure that it is a realistic option. I believe the City of Toronto Act was enacted for political reasons. It is certainly not the city charter that the city of Toronto asked for, and it was tagged along with the review of the Municipal Act. Clearly, I think the Legislature heard loud and clear that the City of Toronto Act is perhaps unique but not all that unique and that certain powers should be granted to all municipalities. It's still the recommended approach.

**Mr. Prue:** If you can't get the recommended approach—the city of Toronto has been granted bylaws which are unique. The city of Windsor came here last



week and asked for basically the same thing. They want the right to be able to tax certain things because they need the money, taxing perhaps for parking or for theatre tickets or for tobacco or alcohol, and it's not contained within this act. How fair is that to those municipalities that need the same revenues but aren't getting the same opportunity as the city of Toronto?

**Mr. Mascarin:** Mr. Prue, you've hit upon one of the main contentious issues of Bill 130, which is that there are really no additional taxing powers given to other municipalities, or indeed any revenue-generating powers. I'm not really arguing whether there should or shouldn't be. I'm just saying that if there are, they should be carved out and be in a separate statute. I think you're going to have certain litigation coming out. There are certain provisions in both Bill 130 and in the City of Toronto Act that are going to be going to legislation.

Just let me give you one example. The broad authority section that's been brought up to the front, the old health, welfare and well-being provision that used to be a specifically defined power in section 130 and that the Ontario Court of Appeal has said should be interpreted broadly, has now been brought up to a broad authority power.

You're going to have a lot of those broad authority powers considered. The difficulty is, once you get a judicial interpretation on one statute and you have provisions similarly worded, even perhaps identically worded, in the other statute, but you have different purposes, different preambles to the statutes, how is a court supposed to consider it, and how are citizens supposed to apply those provisions in the future?

**Mr. Prue:** Do I still have time?

**The Chair:** You're pretty close.

**Mr. Prue:** Go ahead then. I'll pass.

**The Chair:** Mr. Duguid.

1630

**Mr. Duguid:** I'll put forward my first question with a statement. In your deputation, it's almost like you assume that these policies have been developed in some form of vacuum here in the government without any in-house legal assistance, without consultation with municipalities across the province through AMO and without consultation with the city of Toronto. Having been involved in all of that from day one, I can tell you that nothing could be further from the truth.

The City of Toronto Act is there at the request of Toronto. We came to co-operative agreements throughout on what should be in the act. The additional powers and the flexibility that the act affords Toronto are things that Toronto had been after for a very long time, and I know that because I was there for nine years as a city of Toronto councillor. Access to alternative sources of revenue in that act is something that Toronto specifically was after for a long time, because they do have challenges that are unique across the province. The accountability measures are something that Toronto readily accepted and, in many cases, was moving in that direction anyway.

On the other hand, AMO and municipalities across the province had other priorities and needs, and there was not a hue and cry for access to alternative sources of revenue. In fact, when we consulted with many municipal leaders across the province, they said, "At this point in time, that's not something we're necessarily interested in."

I guess my question to you is, why would you think a cookie-cutter approach to this kind of legislation would be more effective, given the diversity of challenges facing cities like Toronto and other cities across the province?

**Mr. Mascarin:** I didn't mean to imply at all that both pieces of legislation were created in a vacuum. I fully acknowledge that there has been lots of consultation—the city of Toronto was very strong in lobbying, demanding the City of Toronto Act—and I'm not advocating a cookie-cutter approach. I believe what I'm saying is, you don't need a City of Toronto Act that has 484 sections and a Municipal Act that has 464 sections—I'm using those very roughly; I may be off by a couple—that almost parallel one another 90% of the time, with different preambles, different purposes that may give the judiciary some cause for concern. It just creates an additional level of discomfort in trying to apply and interpret the statutes.

Again, I'm recommending the approach the Legislature has taken with Bill 51, the planning statute amendment act, where it says, "This does not apply to the City of Toronto," and it's in a different statute. I think that would work much better.

**Mr. Duguid:** Do I have time?

**The Chair:** No, sorry. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. First of all, I would agree with you that there is a direct parallel. When this bill was introduced in the Legislature, I had the opportunity to respond to it prior to having read it. The question I put to the minister very quickly was, "What's the difference between this and the City of Toronto Act?" He said, "Except for some small matters, the taxing powers." That's the major difference. As I hear the parliamentary assistant being questioned on it, I keep hearing, "This is what the city of Toronto wanted; this is what AMO, on behalf of all municipalities, wanted; that's why the difference." Again, it's primarily the taxing powers, and slightly different in the planning process.

But I haven't heard the minister or the parliamentary assistant or yourself really speak about what the people of Ontario wanted in order to see their municipal government function in the best possible way. Could you tell me if you think this will improve the relationship between the people in municipalities and their councils as much as it will improve the relationship between the province and the municipalities?

**Mr. Mascarin:** I think it will do both. Again, my comment is that the legislation is good. It's just that it's flawed in the way it's doing it, to have two separate pieces of legislation. That's really what I'm saying. But it is more permissive. It recognizes greater local autonomy



while having the accountability and transparency controls still in place that will give you those safeguards.

I'm not arguing against the legislation. I guess I'm complaining about the way it's being done. Having two separate pieces of legislation will, I think, cause interpretive difficulties.

**Mr. Hardeman:** Thank you.

**The Chair:** Thank you very much for being here today. We appreciate your delegation.

GREATER TORONTO  
HOME BUILDERS' ASSOCIATION-  
URBAN DEVELOPMENT INSTITUTE

**The Chair:** Our next group is the Greater Toronto Home Builders' Association-Urban Development Institute. Welcome. Make yourself comfortable. We have your package in front of us. Could you state your name and the organization you speak for before you begin, for Hansard. When you do begin, you'll have 15 minutes, and if you leave time at the end there will be an opportunity for us to ask questions.

**Mr. Bob Finnigan:** Thank you. Good afternoon, Madam Chair and members of the committee. My name is Bob Finnigan. I'm the first vice-president of the Greater Toronto Home Builders' Association-Urban Development Institute, and senior vice-president of Heathwood Homes, an active builder and developer in Toronto and the GTA.

We have more than 1,500 members. The GTHBA-UDI was formed through the merger of the Greater Toronto Home Builders' Association and Urban Development Institute/Ontario, and is the voice of the land development and residential construction industry in the greater Toronto area.

I have been a volunteer with the association for a number of years and will be president of the association this January. We appreciate the opportunity to speak with you today regarding the Municipal Statute Law Amendment Act. Joining me is Lara Coombs, director of government and industry Relations for GTHBA-UDI.

Established in 1921, the association is comprised of residential and non-residential land developers; home builders; professional renovation contractors; subcontractors; suppliers; and service, professional and financial firms.

The land development, housing and construction industries are the economic engine of this province. In 2005, the residential construction industry in the greater Toronto area generated 211,000 jobs through housing activity. The value of our investment is over \$15 billion, made up of new construction; land acquisition, excluding land value; renovation; and repair. Collectively—we've said it before—we are committed to working with government to remain a competitive jurisdiction for investment and job creation in order that such growth can deliver quality health care, education, social service and infrastructure.

We acknowledge the thrust of Bill 130, the Municipal Statute Law Amendment Act: the empowerment and granting greater autonomy to municipalities in their decision-making. However, we are of the opinion that a number of significant questions have not been addressed and unintended consequences will emerge if the bill is passed as is. We submit that the bill will not only affect the land development, residential and non-residential construction businesses, and taxpayers in general but also thwart economic development opportunities and perhaps Ontario's competitiveness.

We wish to bring forward to the committee's attention three specific matters—issues that speak to the economic impact of escalating costs—and recommend that home builders be exempted from business licensing by regulation in Bill 130; that municipal corporations, as defined by the act and its related regulations, not be granted the power to charge any taxes, levies or fees; and that the sections of the act which enable municipalities to prohibit and regulate the demolition and conversion of rental properties be deleted as well. Our comments also underscore the need for there to be greater transparency, accountability and certainty with less red tape and bureaucracy within municipal government. Taxpayers and our sector expect nothing less.

Firstly, in Bill 130, we are concerned with the issue of business licensing. GTHBA-UDI recommends that a regulation be passed to exempt the licensing of home builders. We make this recommendation because we are already licensed through the Tarion Warranty Corp. pursuant to the Ontario New Home Warranties Plan Act. Tarion is regulated the Ministry of Government Services under Minister Gerry Phillips. Tarion is fully financed by builder registration renewals and homebuyer enrolment fees. By law, every builder working in Ontario must register and enrol all the homes they construct. Tarion guarantees the statutory warranty rights of new home buyers and regulates new home builders. In addition, Tarion investigates illegal building practices, resolves warranty disputes between builders and homeowners and establishes customer service standards and construction performance guidelines for the industry.

It is the position of the residential home building industry across the province that Tarion, not the municipalities, is in the best position to protect consumers and builders and set standards which home builders and developers must abide by. Further, duplication of licensing of home builders by municipalities is an unwarranted tax grab.

Furthermore, for the record, we want to be clear with respect to the notion that licensing of home builders by municipalities would be on a cost recovery basis. GTHBA-UDI will not accept any model of licensing home builders other than through Tarion, no matter what conditions or terms may be attached.

Our experience with Bill 130 began with our involvement with Bill 53, the City of Toronto Act. Jointly with the Ontario Home Builders' Association, GTHBA and UDI made a number of recommendations for



amendments to the City of Toronto Act. With the goal of ensuring that Toronto remains a strong and vibrant, our main concern was how the City of Toronto Act would change the dynamics of how we do business in the city of Toronto. Then, and through to today, we remain concerned about the adverse financial impacts on housing affordability and industrial-commercial competitiveness through the ability of the city to charge additional taxes to residents, visitors and businesses. We stressed at the time that these additional taxing powers did not address the structural fiscal imbalance between Toronto and the province. This position is widely supported among provincial and municipal politicians, like-minded advocacy organizations, the media and citizens. We can't all be wrong.

1640

Notwithstanding the foregoing, we were satisfied that the government did not include the similar taxing powers in the Municipal Statute Law Amendment Act. However, we were disappointed to learn of a new proposed municipal corporations regulation that grants authority to municipal corporations to impose levies for economic development services. The draft regulation defines "economic development services" as including transit, housing, land redevelopment, parking, business improvement area types of services, and facilities for arts and heritage.

We are not opposed to municipalities being granted authority to establish municipal corporations like Viva in York region when they support specific public policy objectives. However, we must take strong exception when such special-purpose bodies are granted taxing powers. The notion is further ambiguous in that a corporation designed to promote economic development may create a regime that in fact acts as a barrier to investment and job creation through a backdoor tax. Clearly, GTHBA-UDI cannot support a multi-tiered system of development charges, fees and taxes in the name of economic development.

In the fall of 2005, we commissioned a study by economist Will Dunning called *Jobs in Jeopardy*. That study showed that with only a \$1,000 increase in the cost of a home, 284 housing starts are lost, 1,000 jobs are lost, \$20.6 million in government revenue could be lost and \$2.2 million in future realty taxes would be lost. As acknowledged by Minister Sorbara in his 2006 Ontario Economic Outlook, the economy will grow at a slower rate, potentially placing a fiscal drag that will make it difficult for Ontario to compete globally. Our study demonstrates the need to ensure that additional taxes don't accelerate the effects of an already slowing economy.

We also seriously question if there is enough transparency and accountability with respect to granting these special-purpose bodies revenue-raising authority. We submit that the government must, for the benefit of taxpayer protection and Ontario's economic competitiveness, put more controls and oversight within the body of the regulation before we could consider supporting same.

On the issue of transparency, GTHBA-UDI would prefer to see a model whereby the composition of municipal corporations is mandated by regulation to include a balance of elected officials and citizen/business-related appointments. An amendment of this nature would be helpful and supported by us.

Municipalities and housing advocates have recently raised concerns regarding the shortage of rental housing in Ontario due to preventable losses. It has been suggested that municipalities should be given greater powers to prevent the conversion and demolition of Ontario's rental housing stock to ensure a sufficient overall supply of rental housing. This position, we believe, is founded on the inaccurate analysis of the rental market and reflects a lack of understanding of Ontario's rental housing supply, including the impacts of the conversion of units from rental to ownership.

We submit that over time the conversion of ownership to rental housing has considerably dwarfed conversions of rental to ownership. In the city of Toronto, the demand for rental accommodation as a percentage of overall housing demand is declining, as demonstrated by a decrease of some 48,000 renter households between 1996 and 2001. We submit that the power to prohibit and regulate conversions and demolitions will create further barriers to appropriate urban renewal and thwart any efforts to improve modernization of the housing stock. Preventing the demolition or conversion of rental stock does not take into account that investing the capital necessary to maintain aging rental stock is often not economically feasible nor prudent. Conversely, the freedom to convert or demolish rental housing affords landowners the opportunity to infuse needed capital to upgrade older housing stock or intensify a site.

Furthermore, limiting the rights of property owners in this way is a considerable deterrent to future development of rental housing in Ontario. Studies have revealed that conversions have little, if any, impact on the rental market and conversions often provide affordable ownership opportunities.

Regent Park here in Toronto is a prime example of appropriate urban renewal and intensification resulting from the demolition of aging rental housing. Home to 7,500 people, the plan to redevelop Regent Park calls for the replacement of the existing 2,087 rent-geared-to-income units as well as the addition of 2,500 market units, including 500 affordable units. It is widely acknowledged that the wholesale demolition of these rental units was required due to a combination of deteriorating buildings, poorly planned public space and a lack of community facilities. Bill 130 creates a double standard that could seriously impede the ability of private developers to transform aging rental housing, prohibiting urban renewal that could afford tenants with modern rental housing while adding market housing in the spirit of intensification.

GTHBA-UDI recommends that the government eliminate the sections of the act which enable municipi-



palities to prohibit and regulate the demolition and conversion of rental properties.

In closing, we ask you to consider the recommendations we have put before you regarding this bill and to take action with regard to the fiscal imbalance between municipalities and the government.

Thank you very much, Madam Chair and members of the committee, and I look forward to hearing any comments or questions.

**The Chair:** You have left about a minute and a half. In case you're wondering about the bells, we have a 30-minute bell. There are about 26 minutes left, and I think we can get through questioning you and probably hear from another delegation before we have to leave for a vote. Mr. Duguid.

**Mr. Duguid:** Thank you, Mr. Finnigan and Ms. Coombs. It's good to see you again. I wanted to just get a little more background from you on your concerns about municipal corporations and the perceived ability of those municipal corporations to impose levies for economic development services. Municipalities would set up corporations and those corporations would still be accountable to municipalities. My understanding is that in the decentralization of powers, one of the things the city does not allow is decentralization of taxing powers. I guess I'm trying to get a better understanding, because communities can now area rate as it is. How would things change under the current legislation with the economic development corporations being able to be set up?

**Ms. Lara Coombs:** I don't think things would change. It's just another way for a municipality to charge tax or to levy residences and businesses. This is another power so that the municipality would collect revenue from a levy that a municipal corporation would charge and then give it back to the corporation. This is in addition to the development charges and that special rate levy.

**Mr. Duguid:** Is it your concern that the economic development corporation could independently set levies without having to be accountable to the city? Is that where your concern is?

**Ms. Coombs:** No, not at all. It's just an additional way to charge taxes for the municipality. The corporation is accountable to the municipality.

**Mr. Duguid:** But if the city can do it now, what's the difference? It just makes it easier for them to set up the corporation to enable them to—

**Ms. Coombs:** It's just an additional way to do it. It's another way to do it. So you have development charges plus the special area rate levy plus a municipal corporation charging levies. Our concern is the multi-tiered levels of being able to charge levies and fees.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** I want to go to the same point about setting up a corporation and then having the ability to levy fees. Of course, the municipality can't give taxing powers to another authority, but I'm not so sure they can't provide them with the ability to set fees for services they're providing. Is that the concern, that in fact they

could set those fees, not necessarily for the services presently in the development charges but in fact for the services they're providing to the municipality directly to the developers?

**Ms. Coombs:** It's just a broad authority, and so there is uncertainty because it's another tier of taxation that could or could not be implemented. We recognize that the only way a municipal corporation could charge that levy is if they're actually established by the municipality, right? That's where our uncertainty comes in, on top of the development charges that we're already paying, plus those special area rate levies, plus now this new draft regulation has the authority for the municipality to collect fees and taxes, in addition to those other ones that they have, through their municipal corporation.

**The Chair:** Mr. Prue.

**Mr. Prue:** I just want to be clear: The previous speaker from the municipalities was asking that all municipalities have the same authority to tax, or I guess that none of them do—it wasn't clear—but they should all be treated the same. Your position is that a municipal corporation, as defined by the act and its related regulations, not be granted the power to charge any taxes, levies or fees. So you think they ought not to be allowed to generate additional revenues they need.

**Mr. Finnigan:** That's correct.

**Mr. Prue:** Where do they get the money if they need it?

**Ms. Coombs:** They already have the power through that other regulation that exists.

**Mr. Prue:** In Toronto?

**Mr. Finnigan:** No, the Municipal Act levies.

**Mr. Prue:** You're talking about the levies and charges for subdivisions?

**Mr. Finnigan:** Correct.

**Mr. Prue:** What about a city that's built out, like Mississauga or Toronto?

**Mr. Finnigan:** Mississauga has infill opportunities and—

**Mr. Prue:** They have infill, yes.

**Mr. Finnigan:** Right.

**Mr. Prue:** And you propose that they get it from there?

**Ms. Coombs:** Where they get the money is from the province, I would assert.

1650

**Mr. Prue:** I can hear my friends across the—I don't have to laugh, because they're laughing.

This is the conundrum. The municipalities give the province \$3 billion more than they take back in services, and they're looking to get some of that money. The province gives the federal government the alleged \$23 billion more than they get back, and they're looking for money too. I would contend you're probably right, that there's enough money out there, but how is it regularized? How do the municipalities and the province get what they need, and the federal government, which doesn't appear to need it, stop taking it?



**Mr. Finnigan:** It all relates back to who gets charged. The development industry supposedly gets charged for growth, and when we get to a built-out charge like Mississauga, for example, there seems to be an inordinate percentage of that levy that goes to any growth. Our concern is that each and every time there's an establishment of a different level of levy, it is aimed at the development industry to pay.

**Ms. Coombs:** I just also want to make the point that the levies municipal corporations can charge are for residences as well as businesses.

**The Chair:** Thank you for being here today.

#### ONTARIO COMMUNITY NEWSPAPERS ASSOCIATION

**The Chair:** Our next delegation is the Ontario Community Newspapers Association. Welcome. Thank you for being here. Don't be distracted by the bells. We have ample time to hear you and get to the vote. If you could state your name and the organization you speak for, you'll have 15 minutes. If there's time at the end, we'll be able to ask you questions.

**Mr. Gordon Cameron:** Thank you very much. Good afternoon, Madam Chair and esteemed members of the committee. My name is Gordon Cameron and I represent the Ontario Community Newspapers Association, or OCNA. Thank you very much for selecting us to speak during your deliberations on this important piece of legislation.

OCNA represents over 300 community newspapers throughout Ontario that publish from once a month to three times a week. Our members have a total readership of 5.8 million each week, reach 4.7 million households and circulate in every provincial riding. Our papers range in size from the Hornepayne Jackfish Journal, which publishes 254 copies a week, to the Mississauga News, with a total weekly circulation of over 360,000.

While Ontario's community newspapers publish stories on a wide variety of topics, local news is our bread and butter. It's what our readers look to us for and is part of what makes us the voice of the community. Because of this focus, changes to the powers, structure or duties of municipal governments are of great interest to us.

Specifically, OCNA is interested in the sections regarding open meetings. We are firm believers that good government is open government, and you can't have one without the other. Currently, there are only seven instances that exist where a municipal council can exclude the public from what otherwise would have been a public meeting. OCNA has no problem with these exceptions, because they are precisely written and narrowly construed. However, that doesn't mean abuses don't occur. We often hear stories from members about how their municipal council has stretched the definitions outlined in the Municipal Act to absurd lengths to avoid discussing something in public. While this state of affairs isn't the norm in the majority of Ontario's municipalities,

it does occur, and those councils that choose to break the law often do so habitually and with no regard to their duty to keep the public informed.

Several myths exist about strengthening current open meeting laws. First is the idea that having a province-wide set of rules equals the province micromanaging the affairs of municipalities. Not true. Ensuring all Ontarians have the same right to find out what their local government is doing, regardless of which municipality they live in, is very important. It makes no sense that citizens of Brampton could hear what their council discusses on one item while citizens of Sudbury could not. We're all Ontarians, and all Ontarians deserve equal access to our governments.

Further, following a common set of rules does not imply that municipalities are unable to make responsible decisions or be accountable to their citizens. Every one of us in this room is a responsible and accountable adult, and yet there are laws that make it illegal to rob a bank or steal a car. Does having those laws on the books mean that we're being treated like children by the state? Of course not. The only people who will see a negative impact from those laws are those people who choose to rob banks and steal cars, those who choose to break the law. Municipalities that choose to hold in camera sessions on topics that don't fit into the seven current exceptions are breaking the law, the same as if they stole a car or robbed a bank.

For the majority of municipalities that do not abuse the existing regulations, stronger rules won't limit their freedoms to conduct business because they are already operating quite well under current conditions. Strong open meeting laws only punish those who break them and do nothing to those who follow them.

One of the big challenges with the existing legislation is that there's no objective way to judge if an in camera meeting was legally held. OCNA is quite pleased to see a mechanism in Bill 130 whereby citizens could file a formal complaint against a council if they feel a meeting was improperly closed. OCNA likes the way the bill sets up the two options for judging such complaints, either through a municipally appointed ombudsman investigator or through the use of the provincial Ombudsman. This approach gives municipalities the flexibility to choose the option that's best for them while ensuring that the public's rights are protected. The inclusion of the provincial Ombudsman is key because it doesn't force small communities to hire another staff person to manage complaints, and it acts as a bridge for larger communities between the time the act comes into force and the time they will have hired and trained their own ombudsman.

OCNA supports the idea of municipalities appointing their own ombudsmen to decide these cases, but we would recommend that these offices be truly independent and protected in legislation. We feel that municipally appointed investigators should not be employed in any other capacity with the municipality. As you all well know, it's often not enough to do what's right, but you must be seen to be doing what's right.



This request also serves a practical purpose. For instance, if the municipal ombudsman in their other capacity gave a presentation to council in camera and then later that meeting was challenged by a member of the public, would it be fair for them to turn around and sit in judgment of that meeting? What would happen if that person acting as the investigator was laid off from their job after issuing a negative report on the activities of council? Even if the two events were completely unrelated, this would cause huge problems for the municipality. Hiring someone from outside the current municipal payroll would ensure an impartial arbiter of laws concerning open meetings, but would also guarantee that their chosen method of examining complaints was beyond reproach.

While we are very pleased with the new complaint system, we were disappointed to hear that the only consequence that could be levied against a council would be a negative report issued by an investigating officer. The theory goes that municipal officials would want to avoid a public shaming so much, they would follow the law for fear of a public backlash. There are times where this type of moral suasion is very effective, but it doesn't always work. Anyone who follows politics at any level can point to occasions when some elected official was reprimanded for some breach only to be re-elected the next time out. If the threat of the ballot box isn't a universal deterrent, then we must have additional methods to compel compliance.

However, the two most popular methods to discourage abuse of the closed meeting privilege—disallowing the decisions made during improper meetings and fining council members—both have their problems. First, if a decision is reversed, it could cost the municipality millions of dollars and have major repercussions for work that has already begun. Second, if fines were to be levied, who would pay them? The councillors? The municipality? Would the whole council be judged to have broken the law or only those who had voted to go in camera? In spite of these problems, OCNA thinks that both methods should be available to deal with councils that break the law. However, we advocate a measured approach.

For instance, a council that honestly believed it had grounds to hold an in camera session that later is judged to be outside the scope of the seven exceptions might only receive a warning, whereas a council that consistently breaks the law might see fines that increase with each offence. Disallowance would only be used in the most egregious cases where elected officials deliberately cut the public out of the decision-making process. Recommending penalties would be the job of the ombudsman, either local or provincial, who looked into the case, but would be imposed by the Minister of Municipal Affairs and Housing. The minister or his designate could conduct hearings on the appropriate level of punishment for the infraction. This proposal may not be popular with either municipalities or the ministry because of the potential consequences it imposes on the former and the

adjudicatory function it gives to the latter. However, OCNA feels that in order to protect the citizen's right to know, there must be real consequences for those who break the law.

OCNA is also concerned with the addition of an eighth reason for municipalities to go in camera. This new reason, which was designed to facilitate long-range planning and technical briefings, is fundamentally flawed, both in its spirit and execution. The new section states, "A meeting may be closed to the public if, at the meeting, no member of the council or local board or committee of either of them, as the case may be, discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee."

When I read this for the first time, I couldn't for the life of me figure out what they were talking about. Was this an attempt to make sure that journalists didn't show up at the council Christmas party? What could a council discuss that wouldn't materially advance their business or decision-making? And why would it be worthwhile talking about something if it didn't?

OCNA implores this committee to recommend that, at the very least, this section be rewritten in plain language to set out very specifically what it allows to be discussed in camera. As it stands now, it wouldn't take much of a legal contortionist to find a way to shoehorn almost anything into a private session under this clause. However, OCNA sees no need to include this exception in the first place.

Unlike almost all of you, I have no municipal political experience, but what I do have is journalistic experience in covering municipal politics, which gives me an understanding of the process. As a former reporter, I have sat through numerous technical briefings and planning meetings, and, from my experience, I see no reason to close those sessions to the public unless they contain material listed in the existing seven exceptions.

As a reporter, particularly a community newspaper reporter, you have to be a 10-minute expert on everything. Not only do you have to learn it well enough to understand it yourself, you have to be able to explain it to the public. Having access to experts in more technical fields has enabled me to write more complete stories than I otherwise would have been able to. Basic questions that sometimes are asked by members of the council assist greatly in that pursuit. These technical briefings are not just useful for members of municipal council, but also for the public at large. If the only reason to deny the public their right to attend them is to prevent possible embarrassment to an elected official, then we don't feel that's a good enough reason.

**1700**

A strong case can also be made for including the public in the long-term-planning meetings. The public has a great interest in knowing where their hometown is going, so why should they be excluded? Presumably, holding these meetings in secret would allow members of council to think big and float all sorts of fantastic ideas



without fear that the musings would come back and be used against them at election time. Of course, any idea coming from these meetings will have to become public at some point anyway. The public has a great ability to distinguish between a trial balloon and a serious suggestion. If citizens react strongly against a proposal, then the members of council can decide if it's worth continuing the discussion or let it drop. Again, as with technical briefings, unless something falls within the existing seven exceptions, we see no reason to close the long-term planning-meetings to the public.

For the most part, OCNA likes the spirit of Bill 130. The municipalities are responsible, accountable levels of government in their own right. And while OCNA advocates a continuing role for provincial legislation to ensure that all Ontarians have equal access to meetings of their local councils, we do not see this type of legislation as reflecting poorly on municipalities as a whole.

Ensuring and enforcing strong open-meetings laws helps local citizens and the community newspapers who serve them to access the process through which decisions are made in their name. Democracy, like flowers and trees, thrives best when bathed in sunshine. Open-meetings laws are the windows into an otherwise dark room. Protecting the openness of this process keeps the sun shining on our municipal democracy, helping it to flourish and bear the fruit that the citizens expect it to.

Thank you very much for taking the concerns of Ontario's community newspapers into consideration during your study of Bill 130. At this time I'd be pleased to answer any questions you may have.

**The Chair:** You've left about a minute and a half, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. Your presentation is primarily on the issue of the open council meetings, and obviously that's your opportunity and your group's opportunity to get the message from the council meeting to the public so the public understands what's happening on their behalf.

In all the research and what you've heard from your members, has there been a lot of pressure to suggest that there are not enough open council meetings from the councils that are presently functioning, that they don't have the ability to close the meeting often enough for further discussion?

**Mr. Cameron:** The research we've found where they've been saying they need greater latitude to close their meetings may come from the municipal associations, not so much from specific councils. In fact, as I mentioned in the presentation, we have a number of our members, including some members who actually work for newspapers and sit on councils, who tell stories of cases where people around a council table will know that what they're doing is not within the bounds of the Municipal Act in declaring a certain motion in camera, yet they do it anyway. Certainly that does exist.

**Mr. Hardeman:** You also talk about the ombudsman office and so forth. What's your recommendation on how we should deal with the body that would look after

making sure proper council meetings were in closed session and which ones were open?

**Mr. Cameron:** I think the act has it right and allows the municipalities to appoint their own ombudsman if they see fit. Certainly, that's not for everybody. I know there has been some mention of delaying the portion of the investigative leg of this legislation to some certain time in the future to allow them to set up their own ombudsman, but I think that's where the provincial Ombudsman could come in and, at least in the short term, fill that gap, because certainly improperly closed meetings are an issue now, and putting it off for a year would make it easier for the municipalities to set up this ombudsman. But if we have a stop-gap measure with the provincial Ombudsman, I think that's good, and it protects the citizens the minute this bill is enacted.

**The Chair:** Thank you, Mr. Prue.

**Mr. Prue:** I think you've hit the point. You've said it quite eloquently. We've been arguing that for a couple of days here.

Other than a councillor who doesn't want to ask dumb questions in public asking dumb questions, have you heard any other rationale for taking it into—I've not. I just wondered whether you've heard any other, except that some councillor doesn't want to appear stupid to his or her constituents.

**Mr. Cameron:** The only other thing that I've heard is, "We need flexibility. We need the ability to meet local conditions." But again, that doesn't seem to make a lot of sense to me. Where's that flexibility necessary? I've never heard somebody explain to me adequately what flexibility they need on that score.

**Mr. Prue:** Now, a second provision—and you haven't dealt with it, but I'm asking just about everybody because I find it bizarre in the extreme—is the opportunity for members of council who are not participating in a meeting, who can be on a beach in Acapulco with a martini in one hand and a cell phone in the other, to vote. Has your association discussed this, people not at the meeting entitled to vote by way of cell phones, teleconferencing or anything else?

**Mr. Cameron:** It's certainly not something we have discussed. It's an interesting idea, because if the member participated fully in the meeting, that would be perhaps one thing. If that member merely called in for the vote, very similar to what's going on now with the bells, if someone phoned them up and said, "It's time to vote," and they raised their digital hand and that was it, then perhaps not. But that's something we haven't studied.

**The Chair:** Mr. Duguid?

**Mr. Duguid:** From your deputation I gather you're not opposed to councils going into camera for legal purposes: real estate, internal employee-type issues, hiring and all the things that are currently in the act.

**Mr. Cameron:** Yes.

**Mr. Duguid:** Do you have concerns about the way the current provision is written or are you offended by the possibility of council going into a private session to conduct an education session, a team-building session, a briefing session or something of that nature?



**Mr. Cameron:** The problem with those: my question is, why is it necessary? If, for instance, the session is for new members, just as we had the recent municipal election, to say, "Okay, here's where the office is, this is the time it's open," that sort of thing, a very general orientation, then that may be fine.

**Mr. Duguid:** Have you ever been involved in a strategic planning session in the past, corporate or otherwise?

**Mr. Cameron:** Yes, I have.

**Mr. Duguid:** Was it something that was open to the public? I have been at the city of Toronto and I watched as a reporter came in and the entire session shut down and nobody said a word because it was a brainstorming session. If you throw something on a bulletin board for brainstorming, that reporter could pick it up and say, "Brad Duguid just said this." Politicians aren't stupid. They know that that could be picked up, which just totally killed the session. The reporter, thankfully, left on his own, but the city, which had scheduled this session, would have been absolutely powerless to have conducted this brainstorming session. Do you find that offensive?

**Mr. Cameron:** No. I think that part of the problem is that there needs to be a level of trust between politicians and journalists, which there isn't always. Certainly, there are bad journalists out there who would hear a snippet and then make that front page news. The majority of journalists, however, would go into a session like that, recognize it's brainstorming and, in so far as they come out with a story on it, say, "This is what council is thinking of in general terms." Like politicians, there are the good and there are the bad. I think that the majority of us in the journalist profession would not abuse that sort of ability to be in a session like that.

**The Chair:** Thank you for your delegation.

Committee, we are in recess, and the next presenter, I understand, is the Canadian Federation of Independent Business. They have to set up, so they have time to do that, and we'll be back in a few minutes.

*The committee recessed from 1708 to 1718.*

#### CANADIAN FEDERATION OF INDEPENDENT BUSINESS

**The Chair:** We will resume our public hearings on Bill 130, An Act to amend various Acts in relation to municipalities. Our next delegation is the Canadian Federation of Independent Business, and they have a PowerPoint presentation. Welcome. If you could introduce yourself and the organization you speak for, you will have 15 minutes. If you leave time at the end, there will be an opportunity for us to ask you questions.

I'm sorry I'm distracted. I'm watching the clock. I understand that there's going to be another vote and I'm just looking to see how much time we have.

*Interjection.*

**The Chair:** Okay. You have lots of time to do your presentation.

**Mr. Kevin Daniel Flynn (Oakville):** Can't you control these, Madam Chair?

**The Chair:** Sorry; ignore the badgering.

**Ms. Judith Andrew:** Good afternoon, everyone. I'm Judith Andrew, vice-president, Ontario, with the Canadian Federation of Independent Business. With me is my colleague Tom Charette, who is our senior policy analyst.

We'd like to thank the committee for this opportunity to present the views of the Canadian Federation of Independent Business's 42,000 Ontario members on Bill 140. We'd like to review five topics with you: (1) the background to the bill; (2) its key provisions; (3) what Ontario's mayors, reeves and wardens really want in municipal legislation; (4) what CFIB members really need in municipal legislation; and finally, our recommendations.

First to the background of Bill 130: How did we get there? Bill 130 is one of the results of a five-year-old public relations campaign by big-city mayors and their associations for a new deal. It is a campaign for more money and more powers. It was based on the general claim of being shortchanged, but there wasn't really very much data to support that claim. The result for Ontario's municipalities so far has been GST relief on purchases, a share of the federal fuel tax, a share of the provincial gas tax for public transit and the City of Toronto Act with its new revenue and regulatory powers, and now we have Bill 130.

The key provisions of Bill 130 are here. Bill 130 replaced existing prescribed or very specific municipal powers with broad, permissive powers. It covers, among other things, regulation of economic, social and environmental well-being of the municipality; the health, safety and well-being of persons; and the protection of persons and property, including consumer protection and business regulation. This is a huge grant of power. It is difficult to think of any proposed regulation that could not be tied to one or more of the above. Take, for example, the headlines a couple of days ago in the press around parking fees in Toronto. Those are clearly being hitched to the environmental wagon.

So what will this mean for municipalities? It will mean a modest increase in revenue from fees and charges, which will be reduced by the increased costs of regulation and enforcement. For small business, Bill 130 means an increase in regulatory costs and complexity, including more overlap and duplication with senior levels of government, an increase in fees and charges. One only needs to look at the municipal property tax raise to be assured that new powers will be directed at businesses. Many municipalities use small business owners and their families as cash cows. The track record is there for all to see.

Bill 130 is a step in the wrong direction for both municipalities and small businesses, but let's look at what Ontario's municipal leaders want. In April and May this year, as the terms of the new deal began to take legislative shape, CFIB surveyed Ontario's 445 mayors, reeves and wardens to get their ideas. The response rate was astounding: 37.5%, or 167 of them, responded. The



responses included over 60% of the local leaders in Ontario's top 100 municipalities by population, and seven of the mayors of Ontario's 10 largest cities.

What did they have to say? Some 84% of local leaders said they didn't have enough funds from current sources to adequately discharge their responsibilities. This is no surprise. Municipalities have been complaining for a number of years about the effects of downloading. The province has given this legitimacy by its silence. The whole exercise has been noticeably free of hard data. The uploading that occurred some years ago is simply not mentioned.

But now some surprises: 89% of mayors, reeves and wardens want relief from some of their current spending responsibilities, as opposed to new revenue-raising powers. Bill 130 goes in the opposite direction. Some 77% of Ontario's local leaders believe in the principle that the responsibility should be reconfigured such that the level of government that provides a program or service should be the level of government responsible for raising the required revenue. This, of course, implies clear lines of demarcation between the program spending responsibilities of the province and the municipalities. Bill 130 accomplishes nothing here. An overwhelming 93% of Ontario's local leaders would like a clear division of regulatory powers between levels of government to prevent overlap and duplication—just the opposite of what Bill 130 does.

So Ontario's local leaders do not agree with the broad permissive formulation. They want a clear division of spending responsibilities; they want the level of government responsible for spending to be responsible for raising the required revenue; and they want clear lines of demarcation in regulatory responsibilities. And by the way, we have survey data that shows that our CFIB members want exactly the same thing. If you want to look in the appendix to the "Local Leaders Survey," at the last page you will see our matching data.

It is fair to say that Bill 130 doesn't accomplish what Ontario's local leaders really want. What about small business's wishes?

**Mr. Tom Charette:** CFIB members need two things from new municipal legislation: a rationalization and reduction of the current regulatory overload, and elimination of the unethical provincial and municipal property tax load imposed on them.

Here are the most problematic regulatory areas revealed by our 2005 survey on regulation and red tape. Bill 130 will add to the regulatory overload and do nothing about the serious problems on this list. Let's look at the critical problem of business property taxes.

Here's how the province and the city of Brampton treated a small business person in the commercial class in 2005. Our full report is in your kit. It's called "Over-taxing Peter to Subsidize Paul." In this example, Paul earns his income as an employee and Peter is a small businessman. Both have homes with an assessed value of \$200,000. In addition, Peter has a commercial property also assessed at \$200,000. As residents, Peter, Paul and

their families each contribute \$1,888 to fund Brampton municipal services and each contributes \$592 to the province to fund education. Everything's nice and fair at that point. Then, for no other reason than the fact that he earns his living as a businessman, Peter's family has to put another nearly \$2,500 in the pot for municipal services and a whopping nearly \$3,500 for education. That, we submit, ladies and gentlemen, is unethical and cries out to be fixed.

Here's the picture for some of the other municipalities in the ridings represented by members of the committee here. In Toronto, a resident would pay \$1,800, a small business person nearly \$11,000. That comes out of family income. Oshawa, \$3,400; a small business person nearly \$11,000. Pembroke, \$3,700 for a resident; over \$14,000 for a small business person. Oakville, \$2,200 for a resident; over \$7,500 for a small business person. Cobourg, \$3,600; over \$12,000 for a small business person. Finally, in Clarence-Rockland, nearly \$2,800 for a resident and nearly \$9,000 for a small business person.

Ladies and gentlemen, this problem goes right across the province; it's not just Toronto. It really is, in our belief, unconscionable to do this to small business people and their families.

Where does this leave us? Big-city mayors across the country and their association got this ball rolling. The citizenry wasn't crying out for municipal reform. Bill 130 does little of significance for Ontario's local leaders and we should note that the seven mayors of the 10 largest cities in Ontario who responded were identical in their responses to the kind of profile we showed you earlier. It does nothing for small business except create exposure to significant additional harm. It seems to be bad politics: It does little for two major stakeholders and subjects one of them to harm. We think the province should go back to the drawing board and start with one of the root causes of many of the current difficulties: the overdependence in this province on property taxes as a source of government revenue.

**Ms. Andrew:** Ontario's dependence on property tax as a source of government revenue is the highest in the OECD world. The following are our recommendations:

First, suspend consideration of Bill 130;

Second, reduce provincial and municipal government dependency on property taxes as a source of government revenue over a fixed number of years to 1.5%. Just going back for a moment, that would put us in the middle of the pack;

Third, realign provincial and municipal responsibilities in such a way that it:

—creates room for equalizing municipal property tax rates between classes over a multi-year period and mandates such an equalization;

—provides clear lines of demarcation between provincial and municipal spending responsibilities;

—supports the principle that the level of government that is responsible for the spending is responsible for raising the taxes and being accountable for that spending;



—supports the principle that municipalities should provide services to property and the province should provide services to people—it does not lead to an increase in taxes;

—begins a multi-year program of reducing business education property taxes, bringing them into line with residential.

1730

Where will the province get the money? This chart makes it abundantly clear that even though provincial spending has outpaced the combined growth in both inflation and population growth for the last 10 years—and that certainly needs to be adjusted—in the final analysis, spending is a matter of priorities. Certainly a program to accomplish the objectives we have outlined, if spread over a number of years, is within the fiscal capacity of the province. The only remaining question is, does the province have the will to treat small-business owners and their families in a fair and ethical manner? And does it have the will to bring municipal legislation into line with the views of small-business owners and Ontario's mayors, reeves and wardens as well?

**The Chair:** You've left about 45 seconds for each party to ask you questions, beginning with Mr. Prue.

**Mr. Prue:** The uploading and downloading priority, with which we in the New Democratic Party are in total agreement: How many years do you think it would take? We've recommended it be done over eight to 10 years. Is that sufficient time to upload what's been downloaded back to the provincial government? Is eight to 10 years a sufficient time frame, or do you think it should be done sooner or over a longer time frame?

**Ms. Andrew:** When we first started into this issue in 1995, we realized that the problem accrued over a long period of time and we weren't expecting it to be solved overnight. We said 10 to 15 years at that time, so eight to 10 years now—what small businesses need to see is a plan for doing it, a fair plan. I am a bit discouraged that the review that's been commissioned now by the ministry has I think 18 months before it reports, so that eats into the time already.

**Mr. Prue:** Is that my whole 45 seconds? It is.

**The Chair:** You've exceeded it. I was being generous. Mr. Duguid.

**Mr. Duguid:** There were some things in your report that I agreed with; there are a number of things in your report that I had some difficulty with. We're not here discussing the Municipal Act because of a call for a new deal by big cities. It's a review that's done on a continuing basis, and we're here as a result of the review. That's why the Municipal Act has come into it. It just happens that it coincided nicely with the City of Toronto Act, which was here for that particular reason.

You said that there's been provincial silence when it comes to dealing with municipalities and the difficulty with downloading. I don't think the billions of dollars we're investing in public transit is silence, I don't think the uploading of public health service costs is silence, I don't think the uploading of costs for land ambulance is

silence, and I don't think the investment in housing is silence. I think that's action. The review that we're conducting is going to the next step in terms of looking at service alignments and services to see where we go from here. That's really what that is. But to say it's silence I think is inaccurate.

**Ms. Andrew:** What we said was silence in terms of releasing any of the data describing the fiscal position between the two levels of government. The city of Toronto, in the middle of their debate, put out a fairly half-baked thing they had commissioned charging that there was this big problem, and the province didn't respond. There was no information about what the fiscal position was. So whether you've spent money on things is immaterial. The question is that this was not justified by data. It was pushed in terms of a campaign—a well-orchestrated campaign right across the country, we grant you—but there was really very little hard financial information to support it. There was none in the joint task force report. Again, there's a general claim that municipalities need more money, but the public has certainly not been made privy to any data that would support that.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. I want to agree with you. I've been bringing this up as we're doing the public hearings on this bill, that we've done a lot of discussion and planning and deciding on behalf of the relationship between the province and the municipalities, but very little on the challenges between the taxpayers on the property tax side and the councils that govern them.

I do agree with you. In fact, we had the total Legislature vote on a motion to speed up the review of the fiscal imbalance between municipalities and the province, to have a report prior to the next provincial election so that we could have a debate with the public about how that problem should be addressed. Of course, it's quite obvious that the government has decided they want that report to come in after the next election rather than before. So I agree with you and support your principle that we should get on with that and make a decision, if there is a fiscal imbalance, on how we would fix it and how we would make sure that the people who are providing the services are the ones who have to tax for that service. I think that's the most important part of that review, so we can get some accountability and transparency in the delivery of services rather than just finger-pointing.

**The Chair:** Thank you very much for being here today. We appreciate your presentation.

#### ONTARIO SEWER AND WATERMAIN CONSTRUCTION ASSOCIATION

**The Chair:** Our next presentation is the Ontario Sewer and Watermain Construction Association.

*Interjection.*

**The Chair:** I'm going to offer an alternative.

Mr. Zechner, we have 11 minutes before we all have to dash out in order to get back for the vote. You are



entitled to 15 minutes. Would you like to do half of your presentation and after about five minutes we'll take a recess and go and vote, or do you want to do the whole thing?

**Mr. Frank Zechner:** I think I can get through my entire presentation and come back for the questions, if that works well for you.

**The Chair:** Perfect. So if we get close, if you happen to go a little over, I'm going to stop you when we have about three minutes left so that we have sufficient time to get back.

**Mr. Zechner:** I'll be looking for your hand signals.

**The Chair:** Okay. I'll do the "cut" sign, how's that?

**Mr. Zechner:** That sounds fair.

**The Chair:** If you could settle yourself, you'll have 15 minutes from beginning to end. I'll ensure that you don't lose any time. If you could say your name and the organization you speak for, when you're ready, you can begin.

**Mr. Zechner:** Good afternoon. My name is Frank Zechner. I'm the executive director of the Ontario Sewer and Watermain Construction Association. I'm here today to speak on Bill 130, on a relatively narrow number of issues and concerns that we have with respect to this bill.

I would just like to turn your attention to slide number 2, which gives a brief overview of what our association is all about. We represent more than 700 companies that supply and install the vast underground network of pipes and other infrastructure that make up the clean water system. That also includes the pipes and systems that take care of the sanitary and storm drainage back to treatment plants and other sources. We've been representing the sewer and water main construction industry for over 35 years. We've been advocating full cost pricing and accounting for water services, and we've been a major force in the development of the Sustainable Water and Sewage Systems Act, 2002, an act of this province that received royal assent back in December 2002. We are working on the front lines. We're literally in the trenches of this issue in terms of the pipes that make up our water infrastructure, and we've been closely monitoring the issue of the establishment of municipal corporations that might be present in the water and waste water sector.

We have three principal concerns. Bill 130 should be amended to expressly exclude the power to establish corporations for water and sewer infrastructure except if permitted by other legislation, such as the Sustainable Water and Sewage Systems Act, 2002. Some of you may know that as Bill 175.

Our second primary concern is that any municipal corporations that are established in relation to water and sewer infrastructure must be not-for-profit corporations and remain wholly owned and controlled by one or more municipalities.

Our third concern is that we're generally concerned about fair and open tendering practices and processes by municipalities and of course by any municipal corporations, and we recommend that Bill 130 be amended to

require that municipalities, municipal corporations and local boards comply with the Building a Better Tomorrow framework of the province of Ontario.

If I may, I'll just expand upon those three primary concerns.

With respect to the first concern, to only allow corporations for water and sewer infrastructure if permitted by other legislation, we have on the books legislation that within a week will be almost four years old, the Sustainable Water and Sewage Systems Act, 2002. That contemplates full cost pricing and a dedication of reserves. There are regulations we are awaiting from the Ministry of the Environment on that legislation. They are in process. They will, according to the ministry, come in due course. We believe it is inappropriate to move forward and allow municipalities to establish municipal corporations in the water and sewer sector until that act, which is almost four years old, gets a chance to actually establish what the rules and regimen are for corporations involved in that sector.

The municipal corporations water sector should simplify full cost pricing and not complicate or allow municipalities to mask what their finances are. The only corporations permitted at this time under the Municipal Act are a limited number of powers related to transportation, parking and other municipal services. We are concerned that it gets thrown wide open and we are very concerned that it goes to the water and waste water sector before we have the other legislation come into play. We have the Watertight report from the Water Strategy Expert Panel. We also had recommendations about municipal corporations with respect to water services. Let's see what the government intends to do on those rather than implementing something now, only to change it six or nine months thereafter.

We propose a simple resolution for this. It might be achieved by a simple amendment to proposed subsection 203(3). In that, there is an exclusion for electrical distributors under the Electricity Act, 1998. We would expand that to include regulated entities within the meaning of the Sustainable Water and Sewage Systems Act, 2002. That is on page 5 of your materials. Again, that is a suggestion. We appreciate that the Legislature in its wisdom will be able to determine what is an appropriate means of moving forward on that principle.

The second major concern we have is the structure of any municipal corporation having control of water infrastructure. If and when it is appropriate to proceed with municipal corporations in the water sector, it is critical that any new corporate structures having control of water be not-for-profit. We have tremendous concerns about full cost pricing by the public sector. We have a number of MPPs who have expressed concerns directly to our association that we have to be careful about how quickly and how much we raise water rates for municipalities, be they major urban centres or more rural settings. If water rates are to increase, we expect to see that extra revenue applied to water infrastructure, whether it's in treatment plants, better training for operators or actually to replace



pipe. To have an additional component or increase to satisfy a dividend requirement, we think, would be problematic and unfair competition.

The city of Toronto is looking at increases of 9% per year for water billed over the next five years or more. If you were to go with a for-profit corporation, you would have to increase the water rates above that 9% per year, and we feel that's not appropriate.

We expect that the Ministry of Municipal Affairs and Housing wants to protect public ownership of water infrastructure, but we also want to ensure that it considers any adverse consequences associated with profit taking before they establish that legislation and move forward on that issue.

Our third major concern is with respect to an open and fair tendering process for public works.

**The Chair:** Mr. Zechner, can I stop you there so we have sufficient time to get upstairs.

**Mr. Zechner:** Of course.

**The Chair:** Then you can begin your third point. You'll still have eight minutes left, so you will have plenty of time.

We're going to recess for a few minutes to go for the vote.

*The committee recessed from 1743 to 1752.*

**The Chair:** We're back, and we're here to continue public hearings on Bill 130. Mr. Zechner, you have the floor.

**Mr. Zechner:** Thank you, Madam Chair. One last point on the corporate structure: In addition to being not-for-profit, the ownership and control of municipal corporations in the water and waste water sector should be restricted to one or more municipalities in a manner similar to the restrictions under the Electricity Act, 1998. If the municipal ownership requirement was appropriate for electrical distributors, it is equally as important for our vital water infrastructure.

I will now move on to the fair, open and transparent tendering processes. We have significant concerns about fair and open tendering practices with municipalities at this point in time, and we feel that the situation, by allowing municipal corporations to take charge of infrastructure, will be aggravated.

If we look at the current section 271 under the Municipal Act, it provides for a number of policies of municipalities and local boards with respect to procurement of goods and services, specifically clause 271(1)(d), the circumstances under which a tendering process is not required. Right now, a municipality could simply say, "Tendering is not required for any projects less than \$50 million." There's got to be more of an overview, there's got to be more transparency. There's got to be more controls in terms of requiring open and fair tendering practices and not allowing jobs and projects to go to favourite connections through the backrooms.

There's also another provision in the current Municipal Act, clause 271(1)(e), the circumstances under which in-house bids will be encouraged as part of the tendering process. We see a number of problems with that in terms

of how in-house bids would be valued, the potential for hidden subsidies, the lowering borrowing costs for municipalities, the lending of labour and equipment loans, etc.

Again, we want to have fair and open tendering practices for municipalities, municipal corporations and local boards. There is no mechanism in place at this point in time that would establish that standard. The province, however, does have a standard that it has put forward by way of a policy. That policy is known as the Building a Better Tomorrow framework that was released by the Ministry of Public Infrastructure Renewal. Our submission is that it's fair and reasonable to require that municipalities, local boards and municipal corporations comply with the same standards as the province when it comes to the construction of public infrastructure.

The structure of corporations must be transparent. We have seen in proposals a discussion about possible public meetings in order to establish a municipal corporation, but there are no follow-up transactions there. You could have a public meeting in place that would establish a municipal corporation, but the circumstances change and there's no way or there's no impact mechanism proposed in the act or anywhere else within the proposals under Bill 130, that would track what happens if circumstances change or what happens if there are abuses of the system. There's one public meeting to establish a municipal corporation, and off it goes. It can do what it wishes and there's no opportunity for the stakeholders, the municipal residents to actually feed back into that process.

In closing, we have three principal recommendations: It is our belief that municipal corporations should not be permitted in the water and sewage sector until we have the intentions of the government with respect to this area, and those would be coming forward through Bill 175 and perhaps through a response to the Watertight report by the water strategy expert panel.

Secondly, once municipal corporations are established in the water and waste water sector, it is critical that steps be taken now through the Municipal Act to ensure that they be not-for-profit and that they be owned and controlled only by one or more municipalities.

Lastly, we have the concern about entrenched defined procurement policies that have minimum standards for municipalities founded on principles that are applicable to the province.

Those, Madam Chair, are my submissions.

**The Chair:** Thank you. You've left about a minute and a half for each party to ask you questions, beginning with Mr. Duguid.

**Mr. Duguid:** When it comes to restructuring water/waste water, there are a number of different varieties of structures out there: boards, committees, commissions, utilities, departments—which is where Toronto's at—and stuff like that. One of the concerns that I've heard expressed by your industry has been the need to improve purchasing practices in municipalities where, up until recently, sometimes 50% to 60% of contracts that are in the budget are all that are actually let out.



**Mr. Zechner:** That's right. They're not spending the full capital allotment.

**Mr. Duguid:** Why would you want to put handcuffs on municipalities and their creativity in moving forward with other potential mechanisms that might improve things like purchasing? We've been through that in Toronto, and we made our decision to keep it in-house. But at the same time, why would you want to preclude that?

**Mr. Zechner:** We are in favour of open and fair tendering practices. We feel that is the best value for all concerned. There are needs for improvements in some municipalities in terms of their tendering process and the works department getting projects out. That doesn't mean you throw away the open tendering practices. What it means is you try to scale other efficiencies into your works department so they can get more of your capital budget out to the contractors.

**Mr. Duguid:** I'll make this real quick, because I'm almost out of time. There's a standard in the legislation that says that all municipalities would have to have a purchasing policy. Do you really think any municipality would move forward with a purchasing policy that's anything less than what you're proposing? You don't think there would be public scrutiny as they passed that purchasing policy?

**Mr. Zechner:** We have concerns about certain hydro-electrical distributors dealing only with a selected list of contractors, an approved list, and it basically doesn't go out to all qualified contractors. There could be a number of other mechanisms. Municipal corporations might abuse this process by limiting the competition, limiting the turnaround. Again, we feel that open and fair tendering practices work for all concerned. It works for the province, it works federally and it works at the municipal level as well. If we go to municipal corporations, we're concerned that there could be possibilities for abuse.

**The Chair:** Thank you. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. I too want to go to the water and sewer. I think you explained it in the presentation, but your analysis that we should not allow the incorporation of the water and sewer element, or the water and waste water, and if it went that way, it should be non-profit. Thirdly, we want to make sure that everything is properly tendered.

**Mr. Zechner:** Right.

**Mr. Hardeman:** How does not having it in a corporation and having a non-profit corporation direct it towards being equal tendering, when you have a non-profit corporation that doesn't have to show all their costs tendering against the private sector for the service? How does that make more accountability?

1800

**Mr. Zechner:** We have concerns about the municipal corporations competing with industry. We feel that there are a lot opportunities for hidden subsidies there. They could borrow equipment, they could borrow labour. We feel that they should go out to the private sector in terms of competition for tender and should not be subject to an

in-house competition. That is something that is contemplated within the current Municipal Act. We don't feel that is a fair and level playing field, and we want to see that eliminated. They should be to private contractors. They then all compete at the same level. They all have to go to external bonding, they all have to hire their labour according to union rates and they can't borrow the snow-plowing equipment from the municipality in order to do their jobs.

**Mr. Prue:** It may be a philosophical difference, but I don't see how—if we recognize municipalities under this bill as a mature level of government able to make their own decisions, municipalities will, of course, have that choice of whether they want to contract out, contract in, do it themselves, put it out for tender. Who are we to say they shouldn't?

**Mr. Zechner:** Large projects haven't demonstrated, by a number of economic studies over the decades, to be in the best interests of the public, in terms of efficiency and in terms of cost controls, to let those projects out. There will always be internal workings. The works departments will be dealing with emergency repairs of various water infrastructures, but the relaying of miles and miles of new pipe or the construction of a new plant is not something that is generally within the expertise, the resources and the experience of municipalities. Those are "one of" jobs.

The municipal works departments are familiar with this system, they know what needs to be replaced or repaired the soonest and they are in the best position to identify what work has to be done. In terms of actually doing the work, go to the people with the expertise, the resources and the experience to do that work.

**Mr. Prue:** But what if they think they have their own experience in-house? Who are we to tell them they shouldn't do it?

**Mr. Zechner:** Certainly they will have some expertise in-house, and they do so right now on an ongoing basis, in terms of emergency repairs and coordination of some work, but in terms of major projects, we just do not see it as appropriate for them to do it in-house, no more than the Toronto Transit Commission uses its own forces to build a major—they let out that contract work to publicly competed companies in order to construct their work. That's been proven over and over again to be the most efficient mechanism in order to achieve the best value for the public.

**Mr. Prue:** And they probably still will, but who are we to say that in the end—that's what I'm getting at. In the end, if they look at all of that and say, "You can do it cheaper, you can do it better," and then make the foolish decision of taking it in-house, what are you asking the province to do? To tell them that they can't?

**Mr. Zechner:** Basically, the province is guided by a policy at this point in time, and we made reference to that. We feel it is appropriate that there be some form of policy for municipalities. Right now there is a gap. There is just absolutely nothing in there right now that directs whether or not municipalities simply say, "The policy



shall be anything under \$50 million. I can go to whom-ever I want to send it to. And if it's over \$50 million, then it'll go out to fair and opening tendering practices."

There has to be a little bit more to it than something like that. That may be an extreme example, but that's a possibility you could see under the current legislation. Under Bill 130, that would not be changed.

**The Chair:** Thank you very much for being here today. We appreciate your patience with us due to the time we had to break during your presentation. Thank you very much.

**Mr. Zechner:** Madam Chair, I appreciate your patience in hearing me out. Thank you for your time.

### EASTERN ONTARIO WARDENS' CAUCUS

**The Chair:** Our next delegation is the Eastern Ontario Wardens' Caucus. Welcome, gentlemen. I have one name here listed on my schedule. If you're both going to speak, could you identify yourselves, and the organization you speak for, for Hansard. When you begin, you'll have 15 minutes. Should you leave time at the end, there will be opportunity for us to ask questions about your delegation. We do have your paperwork, I believe, in front of us.

**Mr. Clarence Ziemann:** Thank you, Madam Chair. My name is Clarence Ziemann. I am the current warden of Hastings county. I have with me today Mr. Jim Pine, who is the CEO for Hastings county. We are here today to represent, in essence, the Eastern Ontario Wardens' Caucus, a group that represents a large number of the population in eastern Ontario.

The Eastern Ontario Wardens' Caucus represents the 11 counties of eastern Ontario and the single-tier municipalities of the city of Kawartha Lakes and the county of Prince Edward. Over the past six years, the caucus has been active in championing the special issues and challenges faced by municipalities across eastern Ontario. The caucus appreciates this opportunity to speak with the standing committee on this very important piece of legislation.

The Eastern Ontario Wardens' Caucus is also a strong and supportive member of the Association of Municipalities of Ontario. Working together, the caucus and AMO share the same values and principles, particularly as they relate to the enhancement of existing municipal powers and responsibilities.

The Eastern Ontario Wardens' Caucus, like others in the municipal sector, including AMO, strongly supports the thrust of Bill 130 and its goal of modernizing local government in Ontario. The caucus is ever mindful of the importance of growing and improving our municipalities in order to continue the strong bond that we have with our property taxpayers and citizens. As AMO regularly points out, the public rates municipalities as the most trusted level of government in the country. Any new legislation that affects municipalities should help us build on that trust.

Bill 130 is another significant step along the way to modernizing our municipal governments and making

them as responsive as possible to the changing dynamics and challenges that face us individually as well as the sector generally. This government should be commended for making good on many of its initiatives that support local government. Bill 130, in general, will further the improving relationship between our two orders of government.

With such a comprehensive piece of proposed legislation, it should be no surprise that the EOWC does have a number of concerns that it wishes to raise with the standing committee. Of particular concern to the caucus is the failure of the bill to provide municipalities with the fiscal tools to meet the unsustainable fiscal situation that has developed in every Ontario municipality. The ever-increasing gap between the cost of providing services and the amount of money available to pay for them must be addressed. This is not a theoretical debate, ladies and gentlemen; this is a sobering reality.

The EOWC has taken considerable time and care to calculate, document and highlight our members' financial plight. We have, for the past five years, retained the services of the highly respected accounting firm of Allan and Partners to examine in detail the financial position of the caucus members. As a result of the dramatic changes in the types of service now delivered by our members and cost thereof that began in 1998, it has been calculated that there is a built-in systemic shortfall of some \$56 million annually. That represents the difference between all sources of funding and the cost of providing services like land ambulance, social housing, social services, downloaded former provincial highways and health-care-related programs.

AMO notes that on a province-wide basis the annual property tax subsidy for these types of programs to be \$3.25 billion. Professor Harry Kitchen's work at Trent University has verified this subsidy. Professor Kitchen's work paints a very stark picture of the situation here in Ontario. In Ontario, municipal spending on social services for every man, woman and child is \$177, while in the rest of Canada it is only \$4. That means we are paying 4,325% more than municipalities in other provinces. In terms of affordable housing, it's \$88 per capita versus \$18 in the rest of Canada, or 389% more. Even our per capita municipal spending on health-related services is \$50, while municipalities in the rest of Canada only spend \$11. Ontario municipalities are paying 325% more.

This situation is particularly acute for us in the EOWC. Our smaller economy and the burden carried by residential property taxpayers make paying for these income redistribution services even more difficult. In eastern Ontario, residential property owners shoulder nearly 95% of the tax burden. Their capacity to fund more of the cost of our services has reached the breaking point.

### 1810

Bill 130 should have helped us move away from this unsustainable situation by broadening our authority to raise new revenues from sources other than property tax. Access to sales tax or provincial income taxes, for



example, would give us some ability to meet the rising cost of these income redistribution programs.

On the provincial interest override: The Eastern Ontario Wardens' Caucus believes there is a disconnect contained in the bill between the government's stated position that a more mature relationship with local governments is required. Specifically, the caucus is very concerned about section 451.1. This section will give the cabinet broad authority to overrule municipal decisions if it determines that there is a "provincial interest" in any particular matter.

If there is one thing municipalities need, in addition to more money, it is certainty. We need to understand what and when there may be a provincial interest in a matter. The bill, as it is currently drafted, will allow, as AMO has noted, an after-the-fact power to be granted to the government, and this will very clearly bring uncertainty to our decision-making efforts. It also runs counter to the principle of forging a responsible relationship between local municipalities and the province.

The EOWC recommends section 451.1 be deleted from the bill. At the very least, the government must establish, up front, the definition and principles that will guide their determination of what constitutes a provincial interest.

On the matter of corporations and boards: The EOWC strongly endorses the broader powers contained in the bill related to the establishment of new municipal corporations and boards for municipal services. If there is one principle that rings true, it's that there is no single, cookie-cutter approach or one-size-fits-all approach that works for all of Ontario in the provision of municipal services.

The flexibility to design our own service boards or corporations is a good step forward in allowing us to find fresh ways to deliver and manage our services. The EOWC, like AMO and other municipalities, does however urge the government to set out as soon as possible what corporations or boards will not be permitted. In other words, give us the rule book and we can pick the right play for our local circumstances.

Investigations: All of the members of the EOWC are firm believers in transparency and accountability. People get the best government when the decision-making process is clear and understandable. Not everyone will agree with your decisions; we understand that very well. In fact, our ratepayers often come to our meetings and, through the delegation process, let us know what is on their minds.

The new provisions contained in section 239.1 of Bill 130, however, are too open-ended. The current wording allowing anyone, whether they are residents, taxpayers or businesses in our municipalities, to file a complaint on any matter is far too broad in scope. The potential for frivolous or vexatious claims being made is, as was well stated in the AMO brief, one that has the potential of creating decision-making gridlock. The cost to our taxpayers both in terms of time and money could be substantial. The EOWC believes a more reasonable

approach is necessary. This might be through some sort of fee process to help offset costs and reduce frivolous or vexatious claims.

As with AMO, the EOWC agrees that any investigator of a valid complaint should not be a municipal employee. Equally, we fully agree with AMO that there is no need to extend the jurisdiction of the provincial Ombudsman to the municipal sector. Establishing an independent review system at the local level via the appointment of a non-municipal investigator is more appropriate. Having said that, we will need some time to make the right arrangements for an independent investigator, and recommend a delay of a few months before proclaiming a revised section into force.

Open meetings: The EOWC wishes to weigh in on the improvements contained in subsection 239(3.1). The recognition that councils from time to time need to meet in closed session to receive detailed technical briefings from staff or to consider broad strategies but not take specific actions is appreciated. As others have noted, the way municipalities go about their business is more open and transparent than any other level of government. This will continue.

On the matter of policies, the bill contains provisions for streamlining a host of municipal policies, from procurement of goods and services to hiring of our employees. Improving the efficiency with which we craft and implement such policies is a welcome initiative, but we strongly recommend that municipalities be given sufficient time to draft and enact any changes that will be required. The EOWC suggests that these provisions be proclaimed later in 2007 or on January 1, 2008. We simply need the time to complete these new policies.

Property and civil rights policies: Like AMO, the Eastern Ontario Wardens' Caucus feels it needs to state its real concerns about the proposed property and civil rights policy contained in the bill. Our caucus requires a clear and definitive explanation of how such policies will interact with existing rights that are already contained in senior government statutes. We simply do not understand the government's intent and what the possible ramifications of our decision-making process might be relative to an individual's property or civil rights. To date, we have not heard any explanation. Until there is clarification on this new and potentially litigious issue, we highly recommend that it be removed.

Thank you for the opportunity to address the committee.

**The Chair:** You've left about 45 seconds for each party to ask questions, beginning with Mr. Rinaldi.

**Mr. Lou Rinaldi (Northumberland):** First, let me congratulate Your Worship on your recent election. And Jim, it's good to see you again. There's not much time to ask you a question. I wanted to take this opportunity to thank you for being here today and for the hard work that eastern Ontario wardens do. As part of that group of municipalities that will first initiate it, I know you've really hit home.

I wanted to compliment you on bringing forward the fiscal imbalance. You folks were instrumental in bringing



it to this government's attention. I think we've started to listen, but just on that piece, we recognized that. That is why the Premier, at AMO, announced the 18-month review to deal with that issue.

I did have a couple of questions, but 45 seconds doesn't leave much time. So once again, keep up the good work. We look forward to working with you.

**The Chair:** Mr. Hardeman is next, and I want to apologize. He should have been first.

**Mr. Hardeman:** No apology is necessary, Chair.

We've had a lot of discussion about the section of the act that deals with the closed council meetings times—you mentioned it too—when you need to have a meeting for technical briefings from staff and strategic planning. Could you tell me what would be involved in a technical briefing that the public shouldn't hear?

**Mr. Zieman:** I'll turn this over to my colleague, Mr. Pine. He's the manager at this.

**Mr. Hardeman:** I find that the best way for the public to understand the end solution is to get as much information about the debate that got us there. The more delicate the information is, it would seem to me, the more likely the public should hear it, to help them decide.

**Mr. Jim Pine:** If I may, it is probably a rare occasion when the need to get into perhaps a very detailed technical briefing would exist. In my experience, we are rarely required to work outside of the current open-meeting system that we have. But there may be times on particular issues, when we're trying to brainstorm, perhaps, with members of council from a staff point of view and with councillors back and forth in a closed session where we can probe and ask questions, discuss issues along those lines in order to be prepared to with the issue in a more public way. I find that it would just be a helpful opportunity to give the detail that may be needed on a particular subject. Nothing comes to mind at this point, but nonetheless, we think that as municipalities modernize, there are certainly going to be very complex issues out there or some strategies that need to be developed in a manner that allows us free and open discussion amongst council members and staff.

1820

**The Chair:** Mr. Prue.

**Mr. Prue:** This bill does not deal with finances, but let me be very blunt: In my view, the single greatest thing this province can do to assist municipalities is to upload the download. You've talked about that. That would reduce about 25% of your entire costs and put it back to the province. After all, they're all provincial programs. Would you agree with that assessment, that that would be the single biggest thing this government could do?

**Mr. Zieman:** Absolutely. Jim, go ahead.

**Mr. Pine:** The province has engaged the sector in I think a more detailed review of the fiscal situation. But there is no doubt, in Mr. Kitchen's work, that the burden of municipal spending that has to be done for social services, particularly, and others is a significant issue for us. I think that through the fiscal review, we're going to get an opportunity to look at all of the issues related to

the arrangements between the province and the municipalities. Certainly, social services and other income-related programs are going to be a very big part of that.

**Mr. Prue:** And can you wait? This government says that they're going to study it for 18 months. How are you going to cope for the next 18 months? That's two budget periods.

**Mr. Zieman:** Just to get it done right. Jim?

**Mr. Pine:** Well, in essence, we know that this problem didn't occur overnight, and it's going to take some time to resolve.

**Mr. Prue:** Quite the contrary, it did occur overnight.

**The Chair:** I don't think we have time for the debate, but thank you. I think they said to do it right, and that's our guidance. Thank you very much for your time and your patience today with us coming and going.

## ONTARIO RESTAURANT HOTEL AND MOTEL ASSOCIATION

**The Chair:** Our last delegation today is the Ontario Restaurant Hotel and Motel Association. Good afternoon. I guess you're Michelle.

**Ms. Michelle Saunders:** I am.

**The Chair:** Welcome. If you can state the organization you speak for and your name, you'll have 15 minutes. If there's time at the end, we'll be able to ask questions. We do have your deputation material in front of us.

**Ms. Saunders:** Good evening. My name is Michelle Saunders. I'm the manager of government relations with the Ontario Restaurant Hotel and Motel Association. With over 4,000 members, representing 11,000 business establishments, the ORHMA is the largest provincial hospitality industry association in Canada.

*Interjections.*

**The Chair:** Excuse me, can I just get some order so that the deputant can—

**Mr. Rinaldi:** Sorry, Madam Chair.

**The Chair:** That's okay.

You have the floor.

**Ms. Saunders:** Thank you. I want to thank the committee for the opportunity to be before you tonight, and I bring regrets from Terry Mundell, who unfortunately couldn't be here this evening.

The ORHMA membership is comprised of both the accommodation sector and the food service sector, all of whom are significantly impacted by this bill.

As you know, over the past number of years, the hospitality industry has suffered from the effects of 9/11, and the resultant border delays, and SARS, and continues to struggle with effects of the increased Canadian dollar and consumer confusion regarding passport requirements as a result of the western hemisphere travel initiative. All of these factors have been completely out of the control of government and industry. That is why it is so important that the government use this opportunity to ensure that Bill 130 be used as a tool to help support and sustain the industry.



The ORHMA has a number of concerns with Bill 130, but due to time constraints, I'll focus my comments today on the issues of taxation, public safety, and municipal accountability and fairness.

Let me begin with taxation. The ORHMA appreciates that Bill 130 does not grant taxing powers to municipalities. We think this is appropriate and fair policy. This leaves us to reiterate concerns expressed during debate on Bill 53 regarding new powers for the city of Toronto to levy a retail sales tax on the purchase of liquor. As Bill 130 contains no less than 35 pages of amendments to the City of Toronto Act, we respectfully recommend one more. Specifically, the ORHMA recommends that schedule B be amended to include a provision to amend the City of Toronto Act to revoke the city's authority to levy a retail sales tax on the purchase of liquor.

There are more than 8,000 food service establishments in the city of Toronto alone, 4,100 of which are licensed to sell and serve liquor. This represents a quarter of all licensees and a third of the beverage alcohol market in Ontario. As you may know from our discussion on Bill 53, Statistics Canada data show the operating margins in the restaurant and the pub, bar and tavern sectors at only 1.9% and 0.9% respectively. Ontario food service sales growth has seriously lagged behind the rest of Canada over the last seven years, and the pub, bar and tavern segment is actually experiencing lower sales levels currently than in 1999. Operators simply cannot sustain a decrease in sales that will result from an increase in liquor tax, a fourth tax line on a customer's bill.

The monies that can be generated through a municipal liquor tax will not even begin to address the city's financial situation, but a municipal liquor tax will threaten the sustainability of Toronto's licensee community. The city's books cannot be balanced on the back of one industry, particularly this small business sector, which is 63% independently owned and operated.

With regard to public safety, and again echoing our comments to this committee during consideration of the City of Toronto Act, the ORHMA has concerns with the provision of Bill 130, and similarly the provision of the City of Toronto Act, that would allow municipal councils to pass a bylaw extending the hours of sale of liquor in all or part of the city.

The ORHMA respectfully suggests that hours of service in licensed premises need to be consistent across the province in order to ensure community safety. Experience tells us that in border towns where neighbouring jurisdictions have different bar hours, drinking and driving continues to be a major public safety concern as patrons, against all better judgment, try to take advantage of extended hours in licensed premises in neighbouring communities. Public safety is an issue of provincial interest and, as such, demands consistency across Ontario.

The ORHMA opposes municipalities having the authority to extend bar hours, as this process is currently controlled without issue by the province. We therefore recommend an amendment to schedule B to withdraw the

city of Toronto's authority to extend bar hours, and similarly, an amendment to section 6 of schedule D to revoke municipalities' authority to extend bar hours.

With regard to accountability and fairness, the ORHMA respectfully suggests consideration be given to increase municipal accountability and an amendment to Bill 130 that would establish an appeals process for local decisions on issues of fairness, specifically under the special charges section. There currently is no recourse for decisions made under this section.

Allow me a moment to tell you the story of one of our members, Andrew Weigel, who owns and operates the Carolyn Beach Motor Inn in the town of Thessalon. Mr. Weigel unfortunately could not be with me for today's presentation.

In 2005, the Thessalon town council agreed to extend the municipal water system to Lakeside Drive, which is currently home to 14 lots, including the Carolyn Beach Motor Inn.

After taking into account all project funding from government, the outstanding project costs, charged to the 14 lot owners, was \$325,000. This amount was allocated on the basis of each owner's share of the total hectares. To compound the situation, council arbitrarily multiplied the hectares of each of two commercial properties, including the Carolyn Beach Motor Inn, by three to place a disproportionate share of the costs on those properties. Mr. Weigel's contribution is more than \$86,000. Together with the one other commercial business owner, two of the 14 lot owners will pay 66% of the outstanding project costs. If that was not enough, the town has refused him a water meter, and he must pay a flat rate of \$1,175 a month for water. The Carolyn Beach Motor Inn pays more for sewer and water per room than any other motel in Algoma, and pays more than 50% more than the municipally run rest home that has a meter and over 100 full-time residents and 100 staff, surely consuming more water. The Carolyn Beach Motor Inn, by the way, has only 50 rooms at peak season from April through November, and only 15 rooms are open between November and April.

Furthermore, the inn was the only property in the construction area to which the lines were run only to the corner of the property, whereas all other lots had the lines running across the full frontage of the properties. As a result, Mr. Weigel had to spend an additional \$100,000 to install lines to the corner of his property and to install a sewage pump.

These decisions have been made behind closed doors. Indeed, the town of Thessalon commissioned a report specifically to examine the Carolyn Beach Motor Inn water usage and natural resources, yet Mr. Weigel, the proprietor of the establishment, has not been given access to any part of the report or its findings. Although the provincial privacy commissioner agreed that the report should be shared with him, council has refused.

#### 1830

Mr. Weigel has discussed this matter with local and provincial elected officials, the privacy commissioner



and legal counsel. There appears to be no recourse for him, as there is no appeal mechanism under the special charges section of the Municipal Act nor any capacity or requirement for concerns related to fairness to be addressed. Mr. Weigel understands that he must pay the bill and, in order to do so, will take a loan from the town itself, which has also determined the repayment schedule.

This is just one illustration, just one story, just one business owner, but a clear example of the need for increased accountability and transparency at the municipal level to ensure fairness for all taxpayers.

In conclusion, the ORHMA submits to this committee that the Municipal Act should be the tool which allows municipalities to carry out their duties but, at the same time, in a manner which encourages business and stimulates the economy. The ORHMA puts to you that permitting the city of Toronto to introduce a liquor tax, allowing municipalities to extend bar hours, and continuing to deny any recourse under the special charges section will directly and negatively impact the hospitality industry. The ORHMA therefore recommends: the revocation of the city of Toronto's authority to levy a liquor tax; the revocation of municipalities' authority to extend bar hours; and measures to ensure increased municipal accountability that also provides a level of fairness for Ontario's business community.

Thank you.

**The Chair:** Thank you. You've left three minutes for each party to ask you questions, beginning with Mr. Prue.

**Mr. Prue:** I have a question—are you sure?

**The Chair:** Yes. He's looking at me sideways, but I'm leaving the best for last. That's my story.

**Mr. Prue:** Many businesses have come forward, including restaurant businesses, and said that the portion they are required to pay for the education tax is untoward, that it's way too high. You've not mentioned that at all. Do you have that concern?

**Ms. Saunders:** We've not mentioned that. We have focused on the liquor tax because we believe it is a tax that specifically targets our industry, and that is what we believe is unfair.

**Mr. Prue:** Have you taken your concern before the city of Toronto? They've just recently got this. They're not here to defend themselves. They probably don't know you're coming to say that, yet you're asking these guys over here to undo something they've just done. Have you told the city of Toronto that you're coming here today and what you intend to ask for?

**Ms. Saunders:** The city of Toronto and the government are well aware of our concerns that we raised during debate on Bill 53 at the time. We have met with the mayor's office to talk about the liquor tax portion specifically.

**Mr. Prue:** So he knows you're here today to ask for this?

**Ms. Saunders:** He doesn't know I'm here today unless he has seen the schedule, but he certainly knows the position of our association.

**Mr. Prue:** The bar hours: The city of Toronto and many municipalities ask for extension of bar hours for events, things that are happening in the city. You proposed that they not have that authority.

**Ms. Saunders:** Correct. The system currently works that municipalities have the authority to seek permission through the Alcohol and Gaming Commission of Ontario, which keeps it consistent. The act allows for municipalities to extend hours in either a part or all of the city, and there is no limitation on whether it would be for an event or just in general. We think that, for reasons of public safety, bar hours should be consistent throughout the province.

**Mr. Prue:** The bar owners in Toronto who have this authority would lobby their municipal council. Are they in the same accord as a bar owner outside of Toronto on what you're presenting here today?

**Ms. Saunders:** We have a regional board in the city of Toronto, and our regional board opposes the city having the authority themselves. We believe that that authority currently rests, appropriately so, with the alcohol and gaming commission, without issue. There is no problem with the issue if municipalities wish to extend it for an occasion. They certainly have the ability to do that, working with the alcohol and gaming commission.

**Mr. Prue:** Thank you very much.

**The Chair:** You have 43 seconds left.

**Mr. Prue:** That's all right. My questions have been answered.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Madam Chair, in light of the hour, I'll just thank Ms. Saunders for being here today, and Mr. Mundell, whom we've had an opportunity to have discussions with in the past on this, for their input. We very much appreciate it.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. We've had a number of presentations on different aspects of the bill. I'm not sure that asking a lot of questions is going to be very helpful at this point. But I do want to say that if I had a question, particularly on the bar hours, I would ask the government as opposed to the presenter. If there is a need to have consistency, which we've always had in this province, to keep people at a late hour at night to go from a place that's closing to a place that's still open and doing that while they're intoxicated, what would be the advantage to letting some municipalities extend them and not the others? Why not just extend it for everyone and then those municipalities where the bar owners don't want to stay would just close earlier? I would think that an amendment to just allow it for special occasions, as Mr. Prue was referring to, would serve far better than to just have a municipality-to-municipality difference.

The other thing I would say, having heard the presentations at the City of Toronto Act—and I suppose we should say thank you for small mercies from the government that they didn't include the taxing powers in the rest of the province. I guess we should ask them too

maybe, as they've already done once, to amend the City of Toronto Act by taking those out of the act, recognizing that the city says they won't use them and the bar owners say they would like them taken out. With that, thank you very much for your presentation.

**Ms. Saunders:** Thank you.

**The Chair:** Thank you very much for being here.

Committee, you have a detailed interim summary of the people who have been here for the last three of five days from our research officer. That's in front of you to look at.

I'd like to thank all our witnesses and members of the committee for their participation in the hearings.

This concludes my chairing of general government. There will be a new Chair.

**Mr. Prue:** No, tell us it's not so.

**The Chair:** I know you're going to be sad. There will be another person trying to keep order.

Just a reminder to members that amendments are due by 12 noon on Friday, December 1. This is an administrative deadline.

This committee now stands adjourned until 3:30 on Monday, December 4.

*The committee adjourned at 1836.*









## CONTENTS

Wednesday 29 November 2006

<b>Municipal Statute Law Amendment Act, 2006, Bill 130, <i>Mr. Gerretsen / Loi de 2006 modifiant des lois concernant les municipalités</i>, projet de loi 130, <i>M. Gerretsen</i> .....</b>	<b>G-953</b>
Municipality of Greenstone .....	G-953
Mr. Michael Power	
Ontario Bar Association.....	G-956
Mr John Mascarin	
Greater Toronto Home Builders' Association-Urban Development Institute .....	G-958
Mr. Bob Finnigan; Ms. Lara Coombs	
Ontario Community Newspapers Association.....	G-961
Mr. Gordon Cameron	
Canadian Federation of Independent Business.....	G-964
Ms. Judith Andrew; Mr. Tom Charette	
Ontario Sewer and Watermain Construction Association .....	G-967
Mr. Frank Zechner	
Eastern Ontario Wardens' Caucus .....	G-970
Mr. Clarence Zieman; Mr. Jim Pine	
Ontario Restaurant Hotel and Motel Association .....	G-972
Ms. Michelle Saunders	

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### Chair / Présidente

Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)

#### Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)  
Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)  
Mr. Kevin Daniel Flynn (Oakville L)  
Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)  
Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell L)  
Mr. Jerry J. Ouellette (Oshawa PC)  
Mr. Lou Rinaldi (Northumberland L)  
Mr. Peter Tabuns (Toronto–Danforth ND)  
Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### Substitutions / Membres remplaçants

Mr. Ernie Hardeman (Oxford PC)  
Mr. Phil McNeely (Ottawa–Orléans L)  
Mr. Michael Prue (Beaches–East York / Beaches–York-Est ND)

#### Clerk / Greffière

Ms. Susan Sourial

#### Staff / Personnel

Mr Jerry Richmond, research officer,  
Research and Information Services

16  
23



G-41

G-41

ISSN 1180-5218

**Legislative Assembly  
of Ontario**  
Second Session, 38<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**  
Deuxième session, 38<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

**Monday 4 December 2006**

**Journal  
des débats  
(Hansard)**

**Lundi 4 décembre 2006**

**Standing committee on  
general government**

**Municipal Statute Law  
Amendment Act, 2006**

**Comité permanent des  
affaires gouvernementales**

**Loi de 2006 modifiant des lois  
concernant les municipalités**



Chair: Kevin Daniel Flynn  
Clerk: Susan Sourial

Président : Kevin Daniel Flynn  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 4 December 2006

Lundi 4 décembre 2006

*The committee met at 1611 in room 151.*

## ELECTION OF CHAIR

**The Clerk of the Committee (Ms. Susan Sourial):**

I'd like to call this meeting to order. Our first order of business is the election of a Chair. Honourable members, it's my duty to call upon you to elect a Chair. Are there any nominations?

**Mr. Brad Duguid (Scarborough Centre):** I'm delighted to nominate Kevin Flynn.

**The Clerk of the Committee:** Mr. Duguid has nominated Kevin Flynn. Are there any further nominations? Seeing none, I declare nominations closed and Mr. Flynn elected Chair.

MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT DES LOIS  
CONCERNANT LES MUNICIPALITÉS

Clause-by-clause consideration of Bill 130, An Act to amend various Acts in relation to municipalities / Projet de loi 130, Loi modifiant diverses lois en ce qui concerne les municipalités.

**The Chair (Mr. Kevin Daniel Flynn):** We've been called to order already. We're meeting today for clause-by-clause consideration of Bill 130, An Act to amend various Acts in relation to municipalities. As we have five schedules in this bill, what I would like is unanimous consent of the committee to consider the schedules first and then come back and consider sections 1 to 3. Is there consent?

**Mr. Ernie Hardeman (Oxford):** Before the unanimous consent, I have a request. I wish to read into the record a written presentation that was made by the Ombudsman to the committee. I'm just suggesting that we do that prior to going through on the clause-by-clause, recognizing that the presentation deals with a number of items in the bill. In the interest of time, I don't want to have to read the presentation each time a part of the bill comes forward that the presentation deals with. I leave it to you to decide whether I should do that before we go to the schedules or right at the first of the committee hearing.

**The Chair:** Thank you, Mr. Hardeman. I'll just ask the clerk.

In consultation with the clerk, Mr. Hardeman, what may be the best way to proceed, which I think may accomplish both here, is that we do the unanimous consent first, and then if you would like to read the motion into the record after that—would that suit your needs?

**Mr. Hardeman:** That's fine with me, sir.

**Mr. Duguid:** Just on a point of order, Chair: I may be willing to consent to this, but it's with some reservations. We've had an opportunity to read the presentation of the Ombudsman, which I understand is what is before us here. To read word for word the presentation into the record, in my view, accomplishes absolutely nothing but takes up committee time that could be spent going through clause-by-clause and dealing with it section by section.

I understand that Mr. Hardeman has the ability to do this clause by clause and he can pursue it that way, and that may be even more painstaking than having him read the presentation out, but certainly from our side, while we will give unanimous consent to allow him to do that, it's with reservations. We hope he reads it quickly and lets us get on with our clause-by-clause. I'll close with those comments.

**The Chair:** Any further comments?

**Mr. Michael Prue (Beaches—East York):** Just quickly, as well, I'm glad that Mr. Hardeman will be reading what the Ombudsman had to say. I do have to say I was somewhat disappointed. This is an officer of the Legislature, an officer who has come forward with very unique ideas, and we should have afforded him the opportunity of a second hearing. I know that the two opposition parties both supported that, but it was not to be. Be that as it may, the very important points he was trying to make still need to be part of the record.

**The Chair:** Thank you very much, Mr. Prue. Is there consent? There appears to be.

Are there any comments or questions on schedule A, section 1 of the bill?

**Mr. Hardeman:** I guess this is where we—

**The Chair:** That's right.

**Mr. Hardeman:** I just want to say, before I read this into the record—and I think it's very important; it was somewhat mentioned by Mr. Prue—that this is a presentation from an officer of the Legislature, and it speaks primarily to the issues that we've been hearing about from presenter after presenter, both from those who support what's in the bill and those who didn't support what



was in the bill. They all spoke to primarily the same issues as this presentation speaks to.

As was mentioned by the parliamentary assistant, I think every member of the committee got a copy of this presentation so they could read it, but I just want to point out for the record that I'm sure there were a number of presentations that members of the committee got that they have not yet read. In fact, there was one here on my desk as I came in that has come in since last we met, yet we are going to be doing clause-by-clause. So I think for it to be part of the public record—and it should be part of the public record, the position of the Ombudsman on this issue. That's why I think it's so critical that we have it on the record. Recognizing it as a written presentation may be just as advantageous to the committee members, but it will not be as advantageous to the public, who want to be a part of this debate and find out how we got to the end result of the bill and why some of the changes that need to be made are being made and why some of the changes that the Ombudsman recommends are not being made.

1620

With that said, I will read it into the record. We know it will take a little bit of time, but I think it's important for all of us, particularly the constituents and the people at home, who have not had a chance to read it and who have not had a chance to dwell on some of the aspects of it. It starts:

"There is little room for closed-door politics in a mature democracy. We in mature democracies speak about transparency and openness with reverence because democracy cannot be healthy without transparency and openness. The reason is simple. Malicious or self-serving or just plain bad decisions, the bacteria of government, can flourish in the dark but in a democracy cannot survive the sanitizing light of public scrutiny. It is no surprise that those who exercise power behind closed doors invite suspicion. Closed doors breed distrust. And they should. After all, democracy and good government is a 'show-me' business, not a 'trust-me' business. It works well only when those who hold public power are prepared to stand up and take responsibility at every turn, not shelter behind closed doors, the only place where unreasonableness or indolence or indiscretion can find comfort.

"That is why I applaud the theory behind the open-meeting provisions of the Municipal Statute Law Amendment Act, 2006. It is also why I cannot applaud the specifics of the bill. It is badly flawed. Its shame is that it is in fact enabling legislation—it enables closed government while appearing without critical examination to champion openness. I want to bring that critical examination. Critical examination shows that this bill is not an effective solution to closed government. It needs to be fixed.

"As members of this committee are aware, my concerns about the Municipal Statute Law Amendment Act, 2006 are not confined to the open-meeting provisions I am about to address. They extend to the plan to let municipalities create toothless paper-tiger ombudsmen, even

though it would be a simple matter to ensure that everyone in this province has access to effective oversight when confronted with the kind of bureaucratic inefficiency, bad program design, wrong-headed discretion, or simple rudeness that those we elect cannot always attend to. I have said my piece on the ombudsman issue before this committee and, as important as those observations are, I do not want them to waylay me further from addressing the errors that I think are about to be made relating to open meetings. I would have shared my open-meeting observations with this committee directly, but you will recall that I was told my time was up, that I had had my Andy Warhol 15. That is why I am addressing you in this unconventional fashion. I feel the need to do so because the points I am about to make matter. I will keep them brief.

"There are three primary flaws in the open-meeting provisions that are being proposed in Bill 130 that this committee should be aware of and attend to. First, Bill 130 does not adequately promote the culture of openness. Second, it does not provide adequately for prior restraint. And third, it does not provide for effective enforcement. I will address each flaw in turn.

"The culture of openness: Ironically, even though Bill 130 is aimed at increasing openness and transparency, it in fact expands the statutory authority of councils and boards to hold closed meetings. It does so by creating another statutory exception. Section 230(3.1) will allow 'unimportant' meetings to be closed. More specifically, it will permit boards or councils to close their meetings if members are not going to deliberate on, or materially advance, the business of decision-making, whatever that might mean. I understand the idea. If nothing important is going to happen, then we don't need open doors. But here is the thing. Even if public office holders can know in advance whether a meeting will prove to be important or not—a point I am doubtful about—mature democracy will still be harmed by closing the doors. Just as the appearance of justice is critical to the administration of courts, the appearance of accountability is essential in government administration. It is spectacularly counter-productive, if the point is to promote the importance of openness, to allow closed meetings for unimportant matters. We should be working on the notion that it must take a compelling and powerful reason for closing doors, not on the discreditable idea that there should be some compelling or powerful reason for opening them. I can say enough on the point by simply observing that the Association of Municipalities of Ontario defended this exception before this committee by remarking that participants might not be prepared to ask dumb or stupid questions when the doors are open. For my part, I doubt that we should set up a regime that facilitates stupid questions. More to the point, the public should know when their elected and appointed officials are asking dumb questions, just as they should know what else their elected and appointed officials are learning and thinking during meetings held in the public name, under public authority. Creating yet another exception to open



meetings sends the wrong message. It promotes a closed-door culture. Close doors when it is truly needed; otherwise, leave them open.

“Prior restraint: When a meeting has been closed unnecessarily, the damage is done. Learning after a closed meeting is over that it should have been open is about as useful as learning that spinach had *E. coli* after it is eaten. For this reason, the most meaningful remedy against wrongful closure is prior restraint—discouraging unnecessary closures before they happen. The proposed amendments go a small way toward helping. They will require public resolutions to close meetings, something apt to discourage frivolous closures. The provision does not go far enough, however. The resolution should not simply announce that a meeting will be closed and the general nature of the matter to be considered, as the current legislation contemplates. The reasons for closure should also have to be provided, and a notice period should be required. This way, the public can participate meaningfully in any case where they are going to be shut out before they are shut out. Of course, there will be cases where prior notice is not feasible—where a matter that requires closure arises unexpectedly on a pressing issue. Where this happens, the legislation should require the council or board to explain why it is jettisoning the notice period and rushing ahead. If these kinds of safeguards are not built in, there is little real chance that pointless closings will be prevented before they occur.

“Effective enforcement: What, then, of the *ex post facto* response, the oversight regime? How effective is the one proposed by this legislation? In truth, the oversight regime that has been designed is decaffeinated; it is too weak to keep any councils or boards awake to the importance of open meetings. At first blush, it may look like the legislation provides for effective oversight because it gives my office, the Office of the Ombudsman of Ontario, authority to investigate allegations that the open-meeting provisions have not been respected. That is, of course, a job we are well-suited to perform because of our independence, our impartiality, our ability to promise confidentiality and our credible investigative process, supported as it is by an existing infrastructure and a professional staff. The problem with the open-meeting oversight plan in Bill 130 is that, if they are so minded, municipalities can simply oust my office. They can remove the jurisdiction of my office to investigate open-meeting violations by simply appointing their own ‘investigators,’ and they can define the powers and duties those investigators will have.

“Think about it. This legislation contemplates the possibility of 445 different oversight mechanisms sporting 445 different conceptions of when meetings should be open. Even leaving aside the inequality of access to open meetings that this will create from Point Pelee to points north, having a loose and undefined oversight mechanism is no way to assure the people of Ontario that the promise of open meetings is being kept.

“It is bad enough that municipalities can, either by design or inexperience, leave their investigators with a

job to do but without providing the requisite tool kit. They can even oust the Ontario Ombudsman’s authority to help by assigning the job to an employee of the municipality. In the world of integral Ombudsmanry—or real oversight—appointing an indentured servant to oversee its master is like making Rodney the ombudsman of Id. It defeats any confidence that the public can have that an investigation is real and impartial. Even the association of Ontario municipalities agrees that appointing a municipal employee would be a conflict of interest, but its solution smacks of the very attitude that enables pointless closed meetings to occur in the first place. ‘Trust us,’ they say. If public confidence could trade on trust, we would not need open meetings, but we do, and public confidence will not trade on incestuous or inadequate oversight schemes.

“The association of Ontario municipalities suggested that municipalities will likely appoint law firms to investigate. This does not solve the conflict of interest problem. It makes it worse. Ethically, law firms owe duties of loyalty to their clients—the very municipalities whose closed meetings they would be investigating. The sad fact is that the oversight regime in Bill 130 does not respect the most basic principles of oversight—independence and impartiality.

#### 1630

“Policy should not be set on the municipal ombudsman issue and on the open-meeting question because of unmeritorious objections by municipal managers to provincial interference and to Queen’s Park micromanaging. It cannot be forgotten that the stakeholders are the people of Ontario, not its municipal managers. While this province must respect the municipal jurisdiction it has created and respect the maturity of the municipal governments that serve our communities, it is the government of Ontario that ultimately is the custodian of minimal standards for government across the province. That is a responsibility the province of Ontario discharged so well and without reservation when it defined the jurisdiction of the Information and Privacy Commissioner over municipalities. That same resolve needs to be shown here.

“In light of the shortcomings in the open-meeting provisions of Bill 130, I am making three recommendations:

“(1) Delete the new open-meeting exception proposed for section 239 of the *Municipal Act, 2001*. It undermines the message that should be sent;

“(2) Amend section 239 so that the closed-meeting resolution provision requires notice or a public explanation for abridging notice, as well as effective reasons for closing the meeting in the first place; and

“(3) Refer complaints about open-meeting violations to the provincial Ombudsman under the *Ombudsman Act*.

“I am not making this last proposal to enrich our office booty. I am simply letting this committee know that there is cargo room in the very ship that the government of Ontario designed so well to do this kind of task. Do the right thing for accountability and transparency. Instead of a



'trust-me' regime, use the 'show-me' model. We would be pleased to be a part of it."

That concludes the presentation from the Ombudsman that he so desperately wanted to present to the committee but was not afforded the time to do. Thank you very much, Mr. Chairman.

**The Chair:** Are there any other comments or questions on schedule A, section 1 of the bill? Seeing none, shall section 1 of schedule A carry? Carried.

Moving on, still on schedule A, to sections 2 to 7: There are no amendments. Does the committee wish to collapse them? Is there agreement to collapse sections 2 to 7? Agreed. All those in favour? Opposed? That motion is carried.

Moving on, still schedule A, to section 8: The first amendment I have here is a PC motion.

**Mr. Hardeman:** I move that section 10 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be amended by adding the following subsection:

"Licences under other acts

"(2.1) The power to pass bylaws under subsection (2) does not include the power to pass bylaws requiring a licence with respect to any business or other activity for which a licence is required under another act."

The reason for this amendment is, it was put forward by a number of presenters to the committee, who put forward the option that if it's already being licensed by other jurisdictions and particularly by the provincial government, the municipality should not be able to re-license the same business just to raise money.

The home builders made a very passionate plea for this, recognizing that Tarion, the warranty corporation, is already the licensing body that all the home builders build into to provide the insurance for every home that's built in the province. They don't feel it appropriate that each municipality could then individually unlevel the playing field for the builders throughout the province by putting a special regime in their municipality to charge for each house that's being built. That's why we're putting this forward. We would hope that the government would see fit to support this motion, as it really does do what the general presenters pointed out to us.

**The Chair:** Any further speakers?

**Mr. Duguid:** I won't be supporting this motion. I'll be recommending to government members on this side of the committee to not support this motion, for the following reason: Municipalities may find that there are circumstances where they may want to license a particular sector for different purposes than the province does. We could probably think of a number of hypothetical examples, but let me give you one obvious example. Anybody who owns a driver's licence is licensed by the province. Does this then mean, if we were to pass this legislation—and I would suspect that there would be an argument to be had to say that this is what it would mean—that because somebody has a driver's licence the municipalities would then not be able to license them for other purposes?

We won't be supporting this. We have full confidence in municipalities that they will handle these new tools

responsibly. I think we're going to see a trend here, from motion to motion, the differences between how the McGuinty Liberals' government approaches municipalities and how the previous government approached municipalities and still approaches municipalities. This motion, like many others, just shows to me a lack of confidence in the ability of municipalities to handle this new autonomy responsibly.

**Mr. Hardeman:** Again, I think, totally contrary to the comments made by the parliamentary assistant—the parliamentary assistant used the argument that this would prevent the municipality from being able to license someone who held a driver's licence. If we're going to compare it to a driver's licence, what this motion will do is prevent the municipality from putting in a regime to license truck drivers differently than the province presently does, even though they hold a driver's licence, that they put in a special licensing system, or the fact that the truck driver is performing a duty and working within a municipality as a truck driver, that the municipality could license them separately.

A home builder is licensed by Tarion and governed by Tarion to build homes according to the specifications. What this is saying is, yes, even though the municipality has nothing to do with that issue of building homes—it doesn't stand behind the quality of the homes when they're finished—they do have an ability, because they have the building function, to charge a further charge for people to be allowed to build homes in their municipality when, in fact, the person living in the municipality right across the road doesn't have to pay that. I think that's inappropriate and unfair and it creates an unlevel playing field. That's why I think this is a positive motion. I would again ask the government members to support it, though I'm not overly confident that they will.

**The Chair:** Any further speakers? There being none, all those in favour? Those opposed? That motion is lost.

Moving on to section 8 again, schedule A again.

**Mr. Hardeman:** I move that section 11 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be amended by adding the following subsection:

"Licences under other acts

"(3.1) The power to pass bylaws under subsections (2) and (3) does not include the power to pass bylaws requiring a licence with respect to any business or other activity for which a licence is required under another act."

Again, the argument, Mr. Chair, is the same as for the previous section, to say that people shouldn't be in the position where municipalities can double-dip; where, in fact, a second licensing fee could be charged for the same function.

**The Chair:** Any further speakers?

**Mr. Duguid:** Indeed, my argument would remain the same as for the previous motion. Just to add that the minister will retain the ability, through regulations, if he chooses to, to exempt a particular industry down the road.



**The Chair:** Mr. Hardeman?

**Mr. Hardeman:** I'd just ask for a recorded vote, Mr. Chair.

**The Chair:** Any further debate? A recorded vote has been asked for.

#### Ayes

Hardeman.

#### Nays

Balkissoon, Duguid, Mitchell, Peterson.

**The Chair:** That motion is lost.

Moving on to another PC motion, regarding 9.1.

**Mr. Hardeman:** I move that section 11 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be amended by adding the following subsection:

"Transfer of water and waste water powers

"(9.1) For greater certainty, sections 188 to 193 apply to the transfer of any power relating to water and waste water services."

This is an amendment to deal with the presentation made by the county of Oxford relating to their water and waste water problem. Which level of government has the responsibility? Since it was originally set up to be a straight county function, they have contracted it to the lower-tier municipalities. There was some discussion that the bill should be changed to make it a joint jurisdiction and mandate that in the bill. This resolution just suggests that a triple majority would be required to make the changes for the responsibility to go from one tier to the other.

1640

**The Chair:** Thank you, Mr. Hardeman. Is there further debate?

**Mr. Duguid:** We won't be supporting this motion. I'm not really sure what the rationale is. It appears to clarify the powers to transfer through triple majority, including water and waste water, which clearly is already possible under the legislation. I'm not really sure of the purpose of this. I guess I'd be a little bit afraid of potential different interpretations. Somebody down the road trying to interpret this legislation may think there was some kind of reason or try to interpret the reason we're doing this. So we won't be supporting it, because we don't feel it's necessary.

**Mr. Hardeman:** I recognize the concern expressed by the parliamentary assistant. It is strictly a motion to clarify the situation. The process has taken place. Both the county and the city presented to the committee, speaking to this issue. Because, in the spheres of responsibility, water and waste water are an upper-tier responsibility, the city suggested that it be changed to a joint responsibility. The county said it is premature to do that, even though it is already being conducted as a joint responsibility.

So this resolution is just to explain and to put it in legislation, to codify, shall we say, the position that presently exists and not to move forward and make it a lower-tier responsibility, which was, according to the county, a dangerous precedent. I think not passing this resolution will not change what is presently on the ground, but it clarifies that beyond this point they could change what they're doing. If we look at the triple majority situation presently in the bill, my understanding is that there is no rehashing of the same issue. So if you have used the triple majority once, it's difficult to move the triple majority back. This would clarify that it can go up and down with the triple majority vote at any given time.

**The Chair:** Any further speakers on this issue? Seeing none, all those in favour? All those opposed? The motion is lost.

Moving on then to a government motion on page 4. Mr. Milloy.

**Mr. John Milloy (Kitchener Centre):** I'd like to move the following motion: I move that item 2 of the table to section 11 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be struck out and the following substituted—and I have to apologize, Mr. Chair. I'm reading a table, so I hope this—

**The Chair:** I can't wait to see this.

**Mr. Milloy:** Yes. The table would read:

“ 2. Transportation systems, other than highways	Airports	All upper-tier municipalities	Non-exclusive
	Ferries	All upper-tier municipalities	Non-exclusive
	Disabled passenger transportation systems	Peel, Halton	Non-exclusive
	Whole sphere, except airports and ferries	Waterloo, York	Exclusive ”

**The Chair:** Thank you, Mr. Milloy. Any comments?

**Mr. Milloy:** Yes. I think members will recall—and it's part of the reason that I have the pleasure to move this motion—a presentation that was made by the region of Waterloo, of which of course I'm one of the representatives. Right now, due to what I think is basically a historical anomaly, Waterloo and York regions have the authority to provide bus transportation but cannot consider other options. One of the big ones right now in Waterloo is a current discussion that's going on around light rail transit. This amendment will allow Waterloo and York to consider these other options. As I mentioned, the region of Waterloo requested this amendment, and I'm told that York region staff have raised it with officials in the ministry. I believe this is consistent with the government's decision to provide opportunity for innovative approaches to transportation; it would not, as I say, due to a historical anomaly, limit what Waterloo and York could do.

**The Chair:** Thank you, Mr. Prue?



**Mr. Prue:** I was just going to ask a question for an explanation, and I just got it without even asking.

**The Chair:** Okay. Are there any further speakers to this? Seeing none, all those in favour?

**Mr. Duguid:** Recorded vote.

### Ayes

Balkissoon, Duguid, Hardeman, Milloy, Mitchell, Peterson, Prue.

**The Chair:** Seeing none opposed, that motion is carried.

Moving on to the PC motion on page 5, Mr. Hardeman.

**Mr. Hardeman:** I move that item 3 of the table to section 11 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be struck out and the following substituted:

3. Waste management	Whole sphere, including waste and recycling collection and processing, but not including disposal sites, disposal facilities and transfer sites;	Durham, Halton, Lambton, Oxford, Peel, Waterloo, York	Non-exclusive
	Disposal sites, disposal facilities and transfer sites	Durham, Halton, Lambton, Oxford, Peel, Waterloo, York	Exclusive

**The Chair:** Thank you, Mr. Hardeman. Are you speaking to the motion?

**Mr. Hardeman:** Yes. I think this amendment is in fact the request of both Oxford county and the city of Woodstock—they made presentations, and I believe some of the other ones—to seek clarification, as the present act says that waste collection is a joint responsibility and waste disposal is an exclusive sphere in the responsibilities, and there really isn't anything dealing with recycling and the process of collecting recyclables and whether processing recyclables is a waste disposal process or a different process. This is just intended to clarify the division between the responsibilities, that the collection of everything that's being collected is a joint responsibility and the disposal stays an upper-tier responsibility.

**The Chair:** Thank you, Mr. Hardeman. Further speakers?

**Mr. Duguid:** I recognize that this is a request from the city of Woodstock, and I believe the county of Oxford supports it as well. The concern we have is, what about the other municipalities in the region? We don't know what their views are on this—Tillsonburg, Ingersoll or others. The other concern we have is that this doesn't just impact that region or that county; it impacts all the others involved here: Durham, Halton, Lambton, Peel, Waterloo

and York. We don't know how they feel about this particular amendment either.

We feel that if there is the consensus that Woodstock and Oxford county indicated existed for something like this, then they shouldn't have any trouble reaching a triple majority in terms of having the majority of councils with the majority of the population and the majority of the regional councils, or county council I guess, supporting this.

We will not be supporting it for that reason. It may be a good idea. It may actually be what's going on there now. We're just concerned about the unintended impact on other municipalities and regions which are impacted by this, and we don't know whether they're for or against it.

**The Chair:** Thank you, Mr. Duguid. Any further speakers?

**Mr. Hardeman:** I recognize the concern of the parliamentary assistant. I would just point out that, as where everyone stands, this doesn't change the present situation except that it identifies the recycling as part of the process in the non-exclusive area as opposed to in the exclusive area. Some of the ones listed may very well have a recycling depot that is an upper-tier, and I think most of them do that. That's an upper-tier, but the lower-tier municipalities have the right to be involved in that too. So I think this just clarifies what's presently happening as it relates to Oxford and the other municipalities. The resolution was from Oxford county council. They said they wanted this clarified as to where recycling fit into the system, and that was supported, obviously, by the majority of the municipalities in Oxford county through the county resolution. The city also presented to us to show their support for it.

**The Chair:** Any further speakers? Seeing none, all those in favour?

**Mr. Hardeman:** Recorded vote.

**The Chair:** A recorded vote is called for.

### Ayes

Hardeman.

### Nays

Balkissoon, Duguid, Milloy, Mitchell, Peterson.

1650

**The Chair:** That motion is lost.

We move on to the next motion, which is a government motion on page 6.

**Mr. Duguid:** Mr. Chair, this is a little unusual, but I was going to offer Mr. Hardeman an opportunity to put this motion forward. It is the one area where we were able to accommodate some of the concerns of his community. I may regret this later, as the committee soldiers on, and think that our good intentions here may not be reciprocated, but I'm pleased to let Mr. Hardeman move this. It's the same intent as his next motion that he has

put forward, but I think the wording is a little more legally accurate.

**The Chair:** Thank you, Mr. Duguid. Mr. Hardeman?

**Mr. Hardeman:** With that offer, I will withdraw the next motion that will be coming forward, which is our party's motion to the issue, and move this one.

I move that item 10 of the table to section 11 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be struck out and the following substituted:

“ 10. Economic development services	Promotion of the municipality for any purpose by the collection and dissemination of information	Durham	Exclusive
		All counties, Halton, Muskoka, Niagara, Oxford, Peel, Waterloo, York	Non-exclusive
	Acquisition, development and disposal of sites for industrial, commercial and institutional uses	Durham	Exclusive
		Halton, Lambton, Oxford	Non-exclusive

**The Chair:** Thank you, Mr. Hardeman.

**Mr. Hardeman:** I think the resolution reflects some of the issues that were brought forward by a number of communities, including Oxford county, that they wished this to be clarified. In fact, both the presentations that came from Oxford, the city and the county, asked for the issue to deal with the non-exclusivity, because since 1975 the county has shared that responsibility with their lower-tier municipalities, and they would like it to be recognized in legislation.

**The Chair:** Any further speakers? Seeing none, all those in favour? Those opposed? That motion is carried.

The motion on page 7 has been withdrawn.

We're going on to a PC motion now on page 8.

**Mr. Hardeman:** I move that section 11.1 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be amended by adding the following definition:

“‘recycling collection’ means the curbside collection of recyclable material for delivery to a recycling facility.”

Again, this amendment was put forward by the county of Oxford and recommended by the county of Oxford simply to seek a better definition of what is meant by “recycling collection” in the act. This is to explain that, since there has been considerable debate within the county in the past number of years in their waste management debate as to what is recycling and what is garbage, what part of the recycling process is collection and what part is processing, and where the processing of recyclables fits within the spheres of responsibility. This is a definition to help clarify what constitutes recycling.

**Mr. Duguid:** I believe this is sort of connected to motion number 5, which we voted down. Since we voted down number 5, there's really no need to redefine the

recycling collection definition, so we won't be supporting this.

**The Chair:** Any further speakers on the motion on page 8? All those in favour? Those opposed? That motion loses.

Moving on to a PC motion on page 9, Mr. Hardeman.

**Mr. Hardeman:** I move that section 11.1 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be amended by adding the following definition:

“‘waste collection’ means the curbside collection of waste materials and includes special collection at curbside or depots for specific waste materials including household hazardous waste, large items or items not normally permitted or included in general curbside collection for delivery to a disposal facility or transfer station;

“‘waste management’ includes garbage disposal, garbage transfer stations, recycling facilities for processing or transferring recyclables and waste reduction policy initiatives designed to divert materials from garbage disposal facilities.”

This is similar to the previous motion. This amendment seeks to better define the terms “waste collection” and “waste management” in the act. There has been, particularly as it relates to the—and I expect this is a greater issue in rural, smaller-town Ontario than it is in downtown Toronto, but the issue of, first of all, passing policies that restrict the—

*Interruption.*

**The Chair:** Sorry about that.

**Mr. Hardeman:** I didn't know that was even allowed in committee.

**The Chair:** This thing has never rung.

**Mr. Hardeman:** I think it relates a lot to the presentation made by Oxford county. Obviously, I'm missing the point on why these amendments are there, but there's a lot of concern, as the county operates the facility for all the disposal in the county but the lower-tier municipalities have jurisdiction over the recycling: When it comes to government-mandated waste reduction, whose responsibility is it? The county doesn't control the recycling materials or the process of recycling; it doesn't control the pickup. When they're trying to put initiatives in place that would reduce the amount of waste coming, they can't do that because that's a local jurisdiction. The local municipalities have no connection to the disposal site, so they're just looking at the bottom line as it relates to how much it costs to bury it and how much they want to spend on the other initiatives.

This really more clearly defines things like the spring cleanup that they hold in a lot of rural Ontario, where people have been sending their household waste all year, but then once a year the works department of the lower-tier municipality has spring cleanups. They want a clearer definition of what that is and whose responsibility that spring cleanup is.

That's the reason for this. It would not materially affect the province in their operations, but it would help



those municipalities that are affected by the definition of what is “waste collection and disposal” and what is “recycling collection” and “recycling processing.”

**The Chair:** Thank you, Mr. Hardeman. Any further speakers?

**Mr. Duguid:** My concerns on this motion would be the same as the previous: that we’re getting into more definitions here. Unfortunately, what this does is it has the potential to narrow the powers of the municipalities.

I can give you some examples. The proposed definition talks about collection of waste from curbside or depot, but it doesn’t talk about collection of waste from other places. There could be a possibility of backyards or inside buildings. If we fill the definitions, we just narrow it too much. The current definitions provide for a little more leeway for municipalities, so we’d just as soon keep it the way it is.

**Mr. Hardeman:** Just in clarification, I don’t believe under the Municipal Act that municipalities presently have the right to collect out of backyards. My understanding has always been that they can’t go on private property to do their collections—but they do. Be that as it may, this doesn’t prohibit it. The reason there is a description of the depots is, there are communities that don’t have curbside, that have people bring it to the depot, and it then becomes their responsibility as waste collection, not as waste transfer stations, because they’re collecting it; the original stop is for the collection from the waste depot. But having heard that the government is not going to support this motion, I guess I should save some of my powder for a different one.

**The Chair:** Mr. Prue may have some powder as well.

**Mr. Prue:** It’s not so much a comment; it’s a question to the mover. What would happen if the motion doesn’t pass—everything would go on the way it is, and if it is passed, it would just go on the way it is? I don’t understand what the difference would be.

**Mr. Hardeman:** If I could, Mr. Chairman, in my community, there was a lot of discussion about who’s responsible for what and whether the upper tier can take that responsibility and force that level of service on all communities. Some have household hazardous waste collections; some do not. But under the present, there is no definition of the difference between the two, so they really don’t know who should be getting what service. We have one town that wants a higher level of service, but they don’t want to pay the full cost to the county and then also provide the high level of service just to their town. They want to clearly define who’s responsible for what.

It will not change much what’s on the ground with this resolution, but for future changes and what they want to accomplish in the county, it will make it clear as to who’s responsible for what.

1700

**The Chair:** Any further speakers to the motion on page 9? All those in favour? Those opposed? The motion is lost.

Shall section 8, as amended, carry?

**Mr. Hardeman:** Recorded vote.

**Ayes**

Balkissoon, Duguid, Milloy, Mitchell, Peterson.

**Nays**

Hardeman, Prue.

**The Chair:** That motion is carried.

There are no amendments before the committee on sections 9 to 14. Shall we collapse them and deal with them as one? All those in favour of sections 9 to 14? Those opposed? Those sections are carried.

Dealing with section 15, page 10, and it’s a government motion.

**Mrs. Carol Mitchell (Huron–Bruce):** I move that section 23.5 of the Municipal Act, 2001, as set out in section 15 of schedule A to the bill, be struck out and the following substituted:

“Delegation re hearings

“Application

“23.5(1) This section applies when a municipality is required by law to hold a hearing or provide an opportunity to be heard before making a decision or taking a step, whether the requirement arises from an act or from any other source of law.

“Delegation authorized

“(2) Despite subsection 23.2(1), sections 9, 10 and 11 authorize a municipality to delegate to a person or body described in that subsection the power or duty to hold a hearing or provide an opportunity to be heard before the decision is made or the step is taken.

“Rules re effect of delegation

“(3) If a municipality delegates a power or duty as described in subsection (2) but does not delegate the power to make the decision or take the step, the following rules apply:

“1. If the person or body holds the hearing or provides the opportunity to be heard, the municipality is not required to do so.

“2. If the decision or step constitutes the exercise of a statutory power of decision to which the Statutory Powers Procedure Act applies, that act, except sections 17, 17.1, 18 and 19, applies to the person or body and to the hearing conducted by the person or body.”

If I could also provide a comment, I just want to say that it certainly has been the government’s intent to provide municipalities with the flexibility to manage their affairs, and this motion restores the authority of the municipality to delegate to another body to deal with recommendations that would come back to council.

**Mr. Duguid:** The reason for this motion: It came to us through recommendations from municipal lawyers. They were concerned that they were no longer going to be able to delegate hearings for lottery licence refusals, suspensions and revocations to a committee of council. Their concern, which we can have legal counsel here



explain, if necessary, was that the current legislation, as it was written, Bill 130, talked about the law, but they were worried that it wouldn't include when they were required to delegate these decisions and conduct these hearings by order in council.

It's pretty hard to really understand exactly what their concerns were, but our legal staff agreed with the municipal lawyers that it was an appropriate change. There's nothing more to it than that, but if you require a greater explanation, certainly our legal staff would be happy to provide it.

**Mr. Hardeman:** If I could, not to prolong it, I would like to hear the legal explanation, because I have real concerns about how it deals with the public hearings. If we can delegate the hearing and we didn't delegate the decision, then what good is the hearing if the people who are listening are not the people who are going to make the decision?

**Mr. Scott Gray:** My name is Scott Gray, Ministry of Municipal Affairs and Housing, legal branch.

The existing section 252 of the Municipal Act is virtually identical to this. It gives this authority to municipalities now. If you have an obligation to hold a hearing for making a decision, you can give that hearing function to a committee of council. They can hold the hearing, make recommendations to council and then council makes the decision.

That provision was rather enthusiastically deleted by Bill 130, and I think it was Hamilton that came up and said, "Gee, there are decisions"—in the bill, we do allow delegation of hearings for anything under the Municipal Act. But they said, "This one doesn't come under the Municipal Act; this one comes by way of the Criminal Code, and a provincial order in council authorizes us to issue bingo licences. That isn't covered by the delegation provision that's in the Municipal Act, so could you please restore the power we had before under the old Municipal Act, section 252?" That is in fact what this is doing.

What will happen, what can happen, is the same thing that happened before. They want to revoke a bingo licence—someone is a bad actor, or for whatever reason—so they can delegate that to a council committee, whoever's responsible for that, they'll review whether that should be revoked or not revoked, make a recommendation to council and then council will make the final decision. If they want to hold a complete re-hearing of the issue, they're free to do that. If they want to rely on the committee and just hold a relatively small version of the hearing, they're entitled to do that as well.

**Mr. Hardeman:** What you're suggesting then is really, as it relates to the rights and privileges of the charged, shall we say, the people who are in difficulty because of a licence or an infraction or something, they are losing their ability to appear before the judge who is going to sentence them, which is council?

**Mr. Gray:** Council has the ability to say, "Yes, you're going to make your case to this other body." Council has the will to say, "And when that decision comes to council

and you want to speak directly to council, you can't speak"—

**Mr. Hardeman:** I guess my problem is not what council can do. Again, this is my whole problem with the whole discussion on the bill: We seem to forget that this isn't to protect council; this is a bill to protect the citizens of the province of Ontario. So what you're saying is, council can decide that they can't make a decision based on not having enough information, but the accused cannot get his day in court in front of the judge who's going to sentence him. The council gets to agree whether the licence will be suspended, but the accused will not have the opportunity to speak to council directly to put their case forward. It's like the judge deciding that, "These cases aren't that important, so we'll turn these over to my assistant, because I was looking to go off for a bit of a holiday, and I don't want to mess with these decisions that it's automatic that we're going to say we're going to sentence him anyway." It seems to me that we're having a problem here, that we're taking away one's right to be heard.

**Mr. Gray:** First off, it is status quo. It's a long-existing provision, but it doesn't eliminate the fact that council still has to make the decision. Council just can't accept the recommendations and rubber-stamp them; council still has to turn their mind to the issue. In many circumstances I'm aware of, council ends up holding a hearing with as much detail and time and effort as the committee that already went through it—much to their chagrin, I might say, in some cases, but that's actually what happens on the ground.

**Mr. Hardeman:** If it's the status quo, is that the only reason we can give for this being a positive move? If the status quo is what we're all after, then we really don't have much sense in being here, because the status quo needs to be changed, in the government's mind. I can't figure out what the positive of this change is.

**Mr. Gray:** It's kind of the same thing why a committee establishes a committee of adjustment. All of council's time could be taken up running these hearings. You would have to be having meetings every night of the week. The notion is that there are certain things that need to be done. Council as a whole can't exercise all those powers, and at times there's a need to have a subset of council to look into matters and report back to council, which ultimately then still has to turn its mind to that decision. If they just rubber-stamp the recommendations that come back to them, that can be challenged, because that's not a decision. They have to keep an open mind and they still have to determine whether or not the recommendation is what should be accepted. If that means re-hearing submissions from the people who have already spoken to the committee, that's what it will involve.

1710

**Mr. Hardeman:** But this would eliminate any possibility of the accused asking for that hearing and receiving it.



**Mr. Gray:** They can ask. Council has the choice whether to delegate it or not. They can ask council, "Please don't delegate it. I want the hearing at the full council." That's still a possibility. And even if it is delegated, they can say, when the recommendations come back, "I want an opportunity to speak directly to council." They can certainly continue to ask that.

**Mr. Hardeman:** Is there anyplace else in the bill where the decisions of an appointed body are not appealable?

**Mr. Gray:** Of an appointed body?

**Mr. Hardeman:** This one here takes away the right to appeal. Once I've presented to a committee and the committee says, "You lose your licence," and their recommendation goes to council, council never has to hear from the accused again, so in fact he has absolutely no appeal.

**Mr. Gray:** They have a political appeal. This is a political decision—well, it's not a political decision; that's wrong, or it wouldn't be a hearing. But it is a decision council is entitled to make. If somebody doesn't like the recommendations that the committee has made, they can certainly appeal to council: "I think they got the wrong end of the stick here. Let me say my piece and maybe I can persuade you otherwise." That isn't removed.

**The Chair:** Thank you, Mr. Hardeman. Mrs. Mitchell.

**Mrs. Mitchell:** I just wanted to add a comment. As the member knows, we come from the same backgrounds. I can tell you that this is very problematic in rural communities. You were making some comments about rural communities. By giving the ability for council to give authorization to another body, it gives them more flexibility for their meetings. I know this came up repeatedly, when I was on municipal council, to give them—and it was taxi licensing at that time. It gave a fuller opportunity for full discussion with regard to taxis. It just didn't give time within the municipal body, through the whole agenda, because of all that was going on. So that was certainly why my municipal councils requested that. Really, I do feel that this does truly reflect the scope that the municipal councils are capable of and reinforces that. This does not negate the applicant's ability to still petition council. It just allows for fuller discussion.

**Mr. Hardeman:** I guess that's exactly my question, and so far, from the legal branch, I keep hearing that it does prevent the applicant from appealing to council because there is no appeal mechanism left. If they make a recommendation and they've held the only public meeting, council has the ability to make a decision without ever seeing the applicant. What does the applicant do with that decision?

**The Chair:** Okay, let's be clear on this. Mr. Hardeman is asking if a person who is appearing before a body that's been constituted by council still maintains the right to appeal to the council as a whole.

**Mr. Gray:** They can certainly do what all citizens can do when council is making a decision, which is to go to

that council and say, "I don't want you to follow that recommendation that's made, for the following reasons."

**The Chair:** So the answer is, they do maintain the right to appeal.

**Mr. Gray:** Yes, they do.

**The Chair:** Unless I'm missing something—

**Mr. Hardeman:** Mr. Chair, I'd like that clarified. Is there any obligation on council to hear from the applicant?

**Mr. Gray:** The obligation of council is to make sure that they don't rubber-stamp those recommendations. They have to make sure they have heard enough information that they can make their own decisions. They can't just close their minds and say, "That recommendation is what we're going to approve." If people are able to persuade them that they need to hear additional information, they're going to have to. I mean, if that decision is challenged, if there's a judicial review of that decision and they haven't got the information they need to make that decision, that decision can potentially be overturned.

**Mr. Hardeman:** So from that I'm to assume, and you just mentioned the magic words, that the only way an applicant could get his day in court in front of council, if council doesn't want to hear any more, if they're so busy with other things, is through a judicial review, and then the judge has to decide that council didn't have enough information to make their decision. This is taking away the people's right to be heard by council, because council is not obligated anywhere in this resolution to actually personally hear from the applicant before they make their decision.

**Mr. Gray:** The right to be heard is not guaranteed. The right to have your case fairly considered is guaranteed. They have to have evidence in front of them so that when a court reviews it, they can say, "Yes, council fairly came to that decision. The process they used was a fair process." And if it was found to be unfair because they didn't give him an opportunity to be heard, then the decision isn't valid.

**Mr. Hardeman:** Is that written somewhere in the act?

**Mr. Gray:** No, that's the common law. It's common law; some of it is statute law.

**Mr. Hardeman:** So it has nothing to do with the act? The act the way it's written is defined in what I've suggested, that if you're heard by the committee that was authorized to hear it, you do not have the given right to be heard by council.

**Mr. Gray:** The act has to be read in the context of the law that exists out there, so we write legislation on the assumption that the court system is there, on the assumption that when you make a hearing you're subject to judicial review. When there is an obligation, such as when you're refusing someone a taxi licence or revoking it, the law says you have to give them a hearing, and that hearing process has to be run in a way that's fair to that person. If it's not run in a way that's fair to that person, the decision can be overturned by a court. That's the context within which we write a piece of legislation like this.



**Mr. Hardeman:** I still disagree, but we'll leave it at that. I request a recorded vote on it.

**The Chair:** Are there any further speakers? Seeing none, all those in favour?

#### Ayes

Balkissoon, Duguid, Milloy, Mitchell, Prue.

#### Nays

Hardeman.

**The Chair:** That motion is carried.

Shall section 15, as amended, carry? Those in favour? Those opposed? Section 15 is carried.

The committee will note that there are no amendments for sections 16 to 27. Can we deal with them as a whole? Can we collapse them? No objection? All those in favour of sections 16 to 27? Those opposed? They are carried.

Moving on to page 11, part of section 28: It's a PC motion. Mr. Hardeman.

**Mr. Hardeman:** I move that section 28 of schedule A to the bill be amended by adding the following subsection:

"(2) Section 69 of the act is amended by adding the following subsection:

"Region of Waterloo

"(8) The region of Waterloo may use any technology within the full range of higher order or rapid transit technologies for both conventional and disabled passenger transportation systems."

**The Chair:** Thank you, Mr. Hardeman. Are you speaking to the motion?

**Mr. Hardeman:** Yes. This amendment seeks to rectify an old exemption that causes the region of Waterloo and York region to be the only regions that do not have the authority to employ the full range of higher-order rapid transit, light rail etc. The region of Waterloo is growing rapidly and has been designated by the province as an area of further growth. The PC caucus believes that they should be given the tools to deal with that growth. This comes from a presentation that they made directly for this part of the act to be changed to allow them to do the full range of things that they believe they need to do.

**The Chair:** Further speakers?

**Mr. Duguid:** We've already done this in a motion moved by Mr. Milloy, motion number 4. This is just different wording to do the same thing. You don't want to have duplication within a piece of legislation. We won't be supporting this for that particular reason. It's already done.

**Mr. Hardeman:** I'll withdraw the motion.

**The Chair:** Okay, that motion is withdrawn.

All those in favour of section 28, as written? Those opposed? Section 28 is carried.

#### 1720

Sections 29 to 36 have no amendments before us. We'll deal with them as a whole and collapse them. Any objections? All those in favour of 29 to 36? Those opposed? That motion is carried.

Moving on, then, to item number 36.1. It's a government motion.

**Mr. Bas Balkissoon (Scarborough-Rouge River):** I move that schedule A to the bill be amended by adding the following section:

"36.1 Clause 95(2)(d) of the act is amended by striking out 'subsection 128(4)' and substituting 'section 128.'"

Just an explanation: This simply gives the municipalities broad authority to prescribe any rate of speed on highways under their jurisdiction, with the only limit being that it does not exceed 100 kilometres per hour. That's basically what the motion does.

**Mr. Duguid:** Just by way of further explanation, section 128 of the Highway Traffic Act was amended in the original Bill 130. This is consequential to that; it's a cross-reference between the Municipal Act and the Highway Traffic Act.

Mr. Balkissoon is quite right: It's to do with speed limits and giving more flexibility to municipalities with regard to speed limits.

**The Chair:** Thank you. Further speakers? Seeing none, all those in favour of the motion? Those opposed? That motion is carried.

Shall section 36.1, as amended, carry? Section 36.1 carries.

There are no amendments before us on sections 37 to 50. Is it okay to collapse those? All those in favour? Those opposed? They are carried.

We're dealing with the motion on page 13. It appears to be a government motion.

**Mr. Duguid:** I move that schedule A to the bill be amended by adding the following section:

"50.1(1) Subsection 111(1) of the act is amended by striking out 'or Oxford.'

"(2) Subsection 111(2) of the act is amended by striking out 'upper-tier municipalities of Durham and Oxford' and substituting 'upper-tier municipality of Durham.'"

This is a consequential amendment to, I believe, the amendment that Mr. Hardeman moved regarding the county of Oxford previously.

**The Chair:** Before we can deal with that, I understand we need unanimous consent to open the section. It's not open in Bill 130. Do we have unanimous consent? Thank you.

Mr. Hardeman, any comments? Mr. Prue?

All those in favour? Those opposed? That is carried.

Shall section 50.1 carry? Those in favour? Those opposed? That is carried.

Moving on to section 51 on page 14: It's a government motion.

**Mr. Duguid:** Sure, Mr. Chair, I'll read this one too, since my colleagues don't seem to eager to do this.



**The Chair:** It's hard to get good help, isn't it?

**Mr. Duguid:** I move that section 51 of schedule A to the bill be struck out and the following substituted:

"51 Section 112 of the act is repealed and the following substituted:

"Industrial, commercial and institutional sites

"112 Despite section 11, a lower-tier municipality in the upper-tier municipality of Durham may acquire, develop and dispose of industrial, commercial and institutional sites it acquired or had entered into a binding agreement to acquire on or before the day the upper-tier municipality came into existence."

The explanation is identical to the previous amendment. It's consequential to the economic development sphere motion that we moved for the county of Oxford.

**The Chair:** Any further speakers to the motion on page 14? All those in favour? Those opposed? That motion is carried.

Shall section 51, as amended, carry?

**Mr. Hardeman:** I have a question. I don't know if it's appropriate, but the previous amendment that was read into the record, I have here on my page, "section 50.1 of schedule A," section 112 of the act. Someone suggested that that should have read "111." I just wonder which way the parliamentary assistant read it into the record, because we just did 112.

**The Chair:** We'll check that out to make sure we get it right.

**Mr. Hardeman:** Somebody more astute than myself looked at it and said that that should really be section 111. It doesn't say "sure"; it says "I think."

**The Chair:** We'd better find somebody more astute.

**Mr. Duguid:** I guess we'd better find somebody more astute than me as well, Mr. Chair, to take a look at it. Maybe staff could just come up and make a formal confirmation.

**Ms. Elaine Ross:** Elaine Ross, municipal affairs and housing, legal branch. The first motion was section 111.

**The Chair:** So that should be changed?

**Ms. Ross:** I didn't notice that it was read incorrectly. It sounded like it was read correctly to me.

**Mr. Hardeman:** Was it read as 112?

**Ms. Ross:** I don't think so; I think it was read as—

**The Chair:** Just so we're clear, we're dealing with the amendment that's on our page 14, is that right?

**Mr. Hardeman:** Page 13.

**Ms. Ross:** The amendment on page 14 is 112, and the previous one is 111.

**Mr. Hardeman:** On page 13—

**Ms. Ross:** Oh, the title is wrong.

**The Chair:** Just in the title?

**Ms. Ross:** Yes. The amendment is correct: 111. The title has "section 112" in the motion on page 13. Very good.

**Mr. Hardeman:** One for my side.

**The Chair:** Mr. Hardeman, it has been noted and that change will be made.

**Mr. Hardeman:** Thank you very much.

**Mr. Duguid:** Thank you, Mr. Hardeman.

**The Chair:** There are no amendments before us on sections 52 to 78. Can we collapse them and deal with them as one? All those in favour? All those opposed? Those sections are carried.

Dealing with 79, we're just going to take a very short break.

*The committee recessed from 1728 to 1734.*

**The Chair:** We have a new motion by Mr. Hardeman that hasn't been distributed as yet—now has been distributed during the break, is that right? Mr. Hardeman.

**Mr. Hardeman:** I move that section 79 of schedule A to the bill be amended by adding the following subsection:

"(4.1) Section 148 of the act is amended by adding the following subsection:

"Exception

"“(4.1) Despite subsections (1) and (3), a municipality may not require that a retail business establishment be closed to the public on a holiday if the retail business establishment is described in section 3 of the Retail Business Holidays Act as an establishment to which section 2 of that act does not apply.”"

**The Chair:** Thank you, Mr. Hardeman. Speaking to it?

**Mr. Hardeman:** I think the main purpose of this is to make sure that, as we provide the ability of municipalities to have more say in when their stores are open, those that are prescribed to be allowed to be open under the act presently—that municipalities could not pass bylaws to close those so that in fact the opportunity for serving the public would be reduced rather than increased. That's because it relates only to the sections where it would describe which ones are allowed to be open under the law presently. This relates primarily to the presentation we heard from one of the large retailers that was concerned about municipalities restricting their ability to do business in that municipality by forcing them to be closed when other municipalities in the neighbourhood were already allowed to be open.

**The Chair:** Mr. Duguid?

**Mr. Duguid:** We listened very carefully to the Shoppers Drug Mart deputation when it was held here and certainly looked for ways that we could potentially assist in taking care of their concerns. In the end we came to the conclusion, as we will with a number of these issues, that municipalities are responsible, mature levels of government and will act in the best interests of their communities. We don't expect any municipality to deprive their communities of access to essential drugs and health products that they may require any time, in particular during the holiday season or statutory holidays. So we have confidence that municipalities will deal with this maturely and appropriately, and as a result, we don't feel that this motion is necessary and we will not be supporting it.

**The Chair:** Further speakers?

**Mr. Hardeman:** Hearing that, I'm somewhat disappointed. I think this just reassures the people who are trying to do business in our communities of the minimum



protection. If, as the parliamentary assistant suggests, municipalities will not do this, that this will be a moot point in the legislation as to whether—why would anybody need this in there if no one will do that? I think just for the reassurance of the people who, under that section of the act, are allowed to be open, to be assured that that will not disappear in any community when this bill is passed. I think for that we could give that type of assurance by putting this in the act. I don't think it puts any onus on municipalities to do anything other than in the definition of who can stay open under these circumstances, that they must stay open. I don't think that's in any way inferring that they're not a mature level of government. I think it just provides reassurance for the people who expressed concerns, who did not have the same faith in municipalities that the parliamentary assistant has, who were very concerned about what municipalities might do in different circumstances and that they would have a patchwork of opening and closing situations where they couldn't do business in certain communities. I think this is a small way of dealing with that concern.

He did mention the Shoppers Drug Mart presentation. In fairness, in their presentation, they didn't share the concern that municipalities would in no way affect their present operations in the community. I think we could all satisfy their needs by passing this amendment.

**The Chair:** Mr. Duguid?

1740

**Mr. Duguid:** In speaking to statutory holidays and special days, I just want, on behalf of our entire government, to wish Mr. Ernie Hardeman a happy birthday. It's his birthday today, and I understand he celebrated it on the weekend with his family. This is not the greatest place, probably, to be spending your birthday, but on behalf of all of us—speaking of statutory holidays—

**Mr. Milloy:** Is it a statutory holiday?

**Mr. Duguid:** Trust us. We like Ernie Hardeman, but his birthday will never be a statutory holiday—as long as we're in government, anyway.

**Mr. Hardeman:** I agree with that. I wasn't going to mention it in this gathering, but having mentioned it now, I wouldn't want the legislation to provide the ability for municipalities to no longer allow me to celebrate my birthday. So I want to leave this in. My birthday has been there for quite a number of years and I want it to be able to stay there.

**Mr. Milloy:** Hardeman Day.

**Mr. Hardeman:** I don't want a special day, no.

**The Chair:** All those in favour? All those opposed? That motion is lost.

Shall section 79 carry?

**Mr. Hardeman:** Recorded vote.

**Ayes**

Balkissoon, Duguid, Milloy, Mitchell, Peterson.

**Nays**

Hardeman.

**The Chair:** That motion is carried.

Moving on now to section 80, we've got two identical motions, I understand.

**Mr. Duguid?**

**Mr. Duguid:** I'm just going to ask the indulgence of committee that this be held down until Wednesday. We'd prefer to move it on Wednesday; I suppose that would mean we'd have to hold down the section. I'll go with the clerk's advice on this. With the indulgence of committee, we'd like to hold that down till Wednesday.

**The Chair:** So you'd like to hold down consideration of all of section 80; is that correct?

**Mr. Duguid:** I suppose so, yes.

**The Chair:** Is that the way to deal with it, Madam Clerk? Yes.

**Mr. Hardeman?**

**Mr. Hardeman:** At this point I don't have any judgment. I'd like a little better explanation of why we're not dealing with it now.

**Mr. Duguid:** We'd just like to deal with this on Wednesday. There are some further discussions we'd like to have about this. If we could have another 48 hours to have a closer look, that would be our preference.

**The Chair:** It's just a matter of timing, Mr. Hardeman.

We need unanimous consent to allow that to happen. Do we have unanimous consent?

**Mr. Duguid:** Mr. Prue is not aware of what we've asked for, Mr. Chairman.

**The Chair:** Go ahead, Mr. Duguid.

**Mr. Duguid:** We've just asked, Mr. Prue, to hold down section 80 until Wednesday, to consider it Wednesday. We have a few further discussions to undergo on it. We're asking for the indulgence of committee to hold it down until Wednesday. It's not critical, but it would be helpful to be able to deal with it then instead of now.

**Mr. Prue:** This is the taxicab issue—

**Mr. Duguid:** Yes.

**Mr. Prue:** —that you explained to me earlier. It does not impact the city of Toronto, but it may impact the surrounding 905 region.

**Mr. Duguid:** This motion does not impact the city of Toronto, no.

**Mr. Prue:** But it may impact the 905 region.

**Mr. Duguid:** It would deal exclusively with the 905 region, yes; the rest of the province.

**Mr. Prue:** In the spirit of fair play, I'll let it sit for two days.

**The Chair:** Thank you. If Mr. Hardeman is agreeable to that, we have unanimous consent.

*Interjection.*

**The Chair:** That's right. Section 80 will be held down.

Shall section 81 carry? All those in favour? All those opposed? Section 81 is carried.



Dealing with section 82, which would be on page 17: It's a government motion.

**Mr. Milloy:** I move that section 82 of schedule A to the bill be amended by adding the following subsection:

“(0.1) Clause 186(1)(b) of the act is repealed and the following substituted:

“(b) prevails over any act or regulation with which it conflicts except,

“(i) this section and regulations made under this section,

“(ii) sections 171 to 185, and

“(iii) regulations made under sections 171 to 185.”

**The Chair:** Thank you. Speaking to the motion?

**Mr. Duguid:** This is a technical amendment. I've been advised that the way it was originally written there was a comma that could have led to misinterpretation, so they've rewritten it in a different form to accommodate that.

**The Chair:** Any further speakers? Mr. Hardeman?

**Mr. Hardeman:** Yes. I take the parliamentary assistant at his word that it's nothing more than the comma. I get concerned when we have an act that gets preferential treatment or has jurisdiction over any other act.

Is that what's already in the bill, or is that what's already in the Municipal Act? Is this an amendment to Bill 130 or an amendment to the original Municipal Act?

**Mr. Duguid:** This bill would be an amendment to Bill 130. But like I said, it's a technical amendment, so any details regarding why we need to do this would be better placed to our legal staff.

**The Chair:** Would somebody like to come forward, then?

**Mr. Gray:** Once again, the name's Scott Gray, municipal affairs, legal branch.

This really is about a comma. The Ministry of Education raised this. They said that right now the Municipal Act says that the things the minister can put in a restructuring order actually come into effect despite what other legislation says. Because of the existence of one particular comma, the interpretation—in the Ministry of Education's view—is that the Minister of Municipal Affairs could, in fact, put things in a restructuring order that cabinet had not authorized.

The cabinet regulation that says what can go in a restructuring order has safeguards in there for the Ministry of Education, one of them being that you can't have a restructuring that splits wards in the middle of an election year, because that throws out their whole election process. They said, “Because of this extra comma being in there, there's an argument to be made that the municipal affairs minister's restructuring order could in fact override the cabinet regulation that gave the minister his powers in the first place.” They wanted to be clear that, as they put it to me, “We're not beholden to the goodwill of the Minister of Municipal Affairs to protect our interests.”

**The Chair:** Mr. Hardeman?

**Mr. Hardeman:** I guess, then, just to make sure I have it clear: The problem we're solving is presently in existence in the present Municipal Act?

**Mr. Gray:** Yes, it is.

**Mr. Hardeman:** And this is just an amendment added to this section in order to correct—

**Mr. Gray:** That's right, yes.

**Mr. Hardeman:** Okay.

**The Chair:** Thank you, Mr. Gray. Any further speakers? All those in favour? Those opposed? That is carried.

Shall section 82, as amended, carry? Those in favour? Mrs. Mitchell likes it. Those opposed? That is carried.

No amendments before us on 83, 84 or 85. Can we collapse them and deal with them as one? Seeing no objection, all those in favour? Those opposed? They are carried.

Moving on to page 18, there is a PC motion under section 86.

**Mr. Hardeman:** I move that section 203 of the Municipal Act, 2001, as set out in section 86 of schedule A of the bill, be amended by adding the following subsection:

“Financial statements

“(2.1) A corporation established under this section shall make its financial statements available to the public on an annual basis through the publication of an annual report.”

This is straightforward. This amendment says that municipal corporations dealt with in the act should be forced to publish their financial statements on an annual basis so that the public can be sure that their interests are being kept.

There was a lot of concern expressed by our presenters to the committee that there was some hidden plan here to say that documentation could become concealed, and in fact the corporations could be performing duties not necessarily in the most cost-effective manner, but no one would ever know because the documentation would be hidden.

This is a motion that would clarify that, if it was an independent corporation, even though it was under the private corporations act, they would have to publicly publish—not just present it to the council of the municipality—their document. It would be available to the public so they could see how their private corporation was doing.

1750

**Mr. Duguid:** We won't be supporting this particular amendment. We believe that municipalities are responsible and accountable and will use these new tools in that way. Corporations are subject to the applicable reporting or filing requirements for corporations through the Corporations Information Act, the Business Corporations Act and the Corporations Act. These are the kinds of accountability measures that, if they are to be in place, should probably be put in place through regulation. I can give you some examples. The regulations are not done yet, but we're looking at potential accountability meas-



ures in the regs that would include, for instance, the need for a municipality to outline a business case to put in place a corporation. So we are looking at some accountability measures. The one I outlined is one of the ones we're looking at. Again, decisions haven't been made on the regulations yet, but this would not be the appropriate way to do it.

**Mr. Hardeman:** I accept the explanation by the parliamentary assistant, and I look forward to supporting anything we can do to make sure that the public is confident that the corporations are accountable. The reason this amendment is here is that under the private corporations act, obviously all corporations have an obligation to report to their shareholders on an annual basis in order that the shareholders know what their corporation is doing. If that is a corporation set up by the municipality, the shareholders are considered the council of the municipality as opposed to the general population, and they can in fact operate by just reporting to council, and then there's no further direction that council must then disseminate that information to the real shareholders, who are the people of their municipality. So I think this is put forward to make sure that the people, on a regular basis, have the opportunity to see how their corporation is doing and what their corporation is doing.

**The Chair:** Any further speakers? If not, all those in favour of the motion? Those opposed? That motion is lost.

There's a government motion on page 19.

**Mrs. Mitchell:** I move that clause 203(4)(e) of the Municipal Act, 2001, as set out in section 86 of schedule A to the bill, be struck out and the following substituted:

"(e) providing that specified corporations are deemed to be or are deemed not to be local boards for the purposes of any provision of this act or for the purposes of the definition of 'municipality' in such other acts as may be specified."

**The Chair:** Any speakers to this motion?

**Mr. Duguid:** This is another one of those sort of confusing legal motions, but I'll do the best I can. What this does is fix up the cabinet regulations authority. In Bill 130 now, the minister can deem corporations not to be local boards, and it was never the intent of the drafters. But with this amendment, it gives the minister the ability to also deem corporations to be local boards. I'll say it again: The minister can deem corporations not to be local boards. We also want to make sure that the minister has the ability to deem them to be local boards. So it was just a case of a variety of interpretations. In order to be cautious, we thought we'd better clarify that the minister can do either: deem it or not deem it.

**Mr. Hardeman:** I guess I would just question the parliamentary assistant why the minister would need the option one way or the other. It would seem appropriate to me that, regardless of how they were structured, at some point, for reporting purposes, all of them would be considered a local board for those reporting purposes. Then this amendment would do the same as I was suggesting in the other one, that there is a clear line of reporting to

the public of what these corporations are doing if they had to report through the municipality as the local board. So it would seem to me that it would be appropriate—rather than saying that the minister may do it—that they would automatically all be declared a local board.

**Mr. Duguid:** In current regulations there are certain statutes that deem corporations to be local boards, and that continues. This just clarifies that the minister has the ability to continue to deem, under certain statutes, local corporations to be local boards. The way it was written, one interpretation—and there are various interpretations, as you know, to some of the wording of these things—was that the minister would be able to not deem corporations to be local boards but would not have the ability to deem them to be local boards, and that may be something down the road in a particular circumstance that he may need the ability to do. I know it's confusing, but that's the explanation that I have for it.

**Mr. Hardeman:** I live my life in confusion.

**The Chair:** Any further speakers? If not, all those in favour? Those opposed? That motion is carried.

Shall section 86, as amended, carry? Those in favour? Those opposed? Section 86 is carried.

No amendments to 87. Shall section 87 carry? Those in favour? Those opposed? Carried.

Moving on to section 88, there's a government motion on page 20.

**Mr. Balkissoon:** I move that section 216 of the Municipal Act, 2001, as set out in section 88 of schedule A to the bill, be amended by adding the following subsection:

"Exception, City of Greater Sudbury

"(3.1) Despite subsection (3), the City of Greater Sudbury may, in accordance with subsection (1), change the number of members it appoints as its representatives on the board of health of the Sudbury and District Health Unit, subject to the following rules:

"1. The number shall not be smaller than two or larger than seven.

"2. At least one of the members shall also be a member of the council of the city.

"3. At least one of the members shall not be a member of the council of the city."

I think it's pretty self-explanatory.

**The Chair:** Mr. Duguid?

**Mr. Duguid:** I think they want a further explanation.

**Mr. Hardeman:** Yes.

**Mr. Duguid:** Maybe it's not that self-explanatory. The motion continues the authority of the city of greater Sudbury to change the number of members it appoints to its board of health. This authority was previously found in regulation, but in the amended act there is no longer authority to do this by regulation. This is something that is supported by the Ministry of Health and Long-Term Care and, I assume, the city of greater Sudbury.

**Mr. Hardeman:** I guess I'm just wondering about the connection between the rest of the province and the city of Sudbury as it relates to how we appoint members to the board. Why is it that Sudbury is different than everyone else?



**Mr. Duguid:** I think I'd best refer this one to staff to respond to. I don't want to mislead you in any way. Is there anybody here who has a background on the greater Sudbury—

**Mr. Gray:** Scott Gray from municipal affairs again. This is a provision that was in the old Regional Municipality of Sudbury Act. How long it was in the act, I'm not sure, but we brought it forward in the Municipal Act into a regulation. Now that authority no longer exists, so all we're doing is retaining status quo. Why it was there in the first place, I'm not sure I know. I'm told it relates to the fact that most regions' councils are the board of health. In Sudbury, they have a board of health that includes Sudbury and some surrounding territories. Sudbury council itself is not the board of health. I think how it related was, Sudbury was of the view that if other regions changed their council composition, that changed the composition of the board of health. When we change our composition, that doesn't automatically change the composition of the board of health. They wanted to have flexibility. Their view was, other regions had the flexibility—if they went from a council of 12 to 10, the board of health went from 12 to 10, and so Sudbury wanted some kind of flexibility itself.

**Mr. Hardeman:** I guess I would ask: Oxford was not one of the regions where the upper tier was the board of health; they were an appointed board of health. They changed it a number of years ago. I'm not aware that any legislation was changed, so I have to presume that it was agreed to by regulation through the province. Now you're suggesting that the regulation has disappeared to do that, so I wondered whether in fact there's a problem with the Oxford board of health, as it was with Sudbury.

**Mr. Gray:** No. My understanding, if I can remember now, the regulation—it used to be that we restricted municipalities on what changes they could make to local boards. They could only do prescribed changes. The

limits on what changes they could make were all in regulation. For instance, they couldn't make any changes to boards of health, police service boards or certain core provincial local boards that we didn't allow them to touch. No municipality can alter their board of health because its composition is established by regulation under the public health and promotion act or whatever that act is called. We made this one exception for Sudbury because it had pre-existed before, and we put that in the regulation. Now we're saying that municipalities can make any changes they want to any local board except for this list, but it's in legislation now, so we can't set up the list and set up the exceptions to the list by regulation. The prohibitions are right in the legislation, and the one leftover piece is the exception we made for greater Sudbury.

**Mr. Hardeman:** For the record, I just wanted to make sure we understood that if the removal of the regulation has an impact on others, that should be noted here and this list maybe should be larger than just the city of Sudbury. I guess I'm assured by the legal branch that in fact we've looked at it and this is the only place where this is needed.

**Mr. Gray:** That's right. The only exception was for Sudbury.

**Mr. Hardeman:** Okay. Thank you.

**The Chair:** Any further speakers? Those in favour of the motion? Those opposed? That motion is carried.

Shall section 88, as amended, carry? Those in favour? That's carried.

Sections 89 and 90 have no amendments. All those in favour? We'll deal with them at the same time. Those opposed? Sections 89 and 90 are carried.

It being 6 o'clock, the committee stands adjourned until 3:30 p.m. Wednesday, December 6, 2006.

*The committee adjourned at 1802.*





## CONTENTS

Monday 4 December 2006

<b>Election of Chair</b> .....	G-977
<b>Municipal Statute Law Amendment Act, 2006, Bill 130, <i>Mr. Gerretsen</i> / <b>Loi de 2006</b> <b>modifiant des lois concernant les municipalités, projet de loi 130, <i>M. Gerretsen</i></b> .....</b>	G-977

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### **Chair / Présidente**

Mr. Kevin Daniel Flynn (Oakville L)

#### **Vice-Chair / Vice-Président**

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)  
Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)  
Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)  
Mr. Kevin Daniel Flynn (Oakville L)  
Mr. Jerry J. Ouellette (Oshawa PC)  
Mr. Tim Peterson (Mississauga South / Mississauga-Sud L)  
Mr. Lou Rinaldi (Northumberland L)  
Mr. Peter Tabuns (Toronto–Danforth ND)  
Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### **Substitutions / Membres remplaçants**

Mr. Bas Balkissoon (Scarborough–Rouge River L)  
Mr. Ernie Hardeman (Oxford PC)  
Mr. John Milloy (Kitchener Centre / Kitchener-Centre L)  
Mrs. Carol Mitchell (Huron–Bruce L)  
Mr. Michael Prue (Beaches–East York / Beaches–York-Est ND)

#### **Also taking part / Autres participants et participantes**

Ms. Elaine Ross, senior counsel,  
Mr. Scott Gray, counsel,  
municipal law section, Ministry of Municipal Affairs and Housing

#### **Clerk / Greffière**

Ms. Susan Sourial

#### **Staff / Personnel**

Ms. Cornelia Schuh, legislative counsel

G-42



G-42

ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 6 December 2006

# Journal des débats (Hansard)

Mercredi 6 décembre 2006

**Standing committee on  
general government**

Municipal Statute Law  
Amendment Act, 2006

**Comité permanent des  
affaires gouvernementales**

Loi de 2006 modifiant des lois  
concernant les municipalités



Chair: Kevin Daniel Flynn  
Clerk: Susan Sourial

Président : Kevin Daniel Flynn  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 6 December 2006

Mercredi 6 décembre 2006

*The committee met at 1600 in room 151.*MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT DES LOIS  
CONCERNANT LES MUNICIPALITÉS

Consideration of Bill 130, An Act to amend various Acts in relation to municipalities / Projet de loi 130, Loi modifiant diverses lois en ce qui concerne les municipalités.

**The Chair (Mr. Kevin Daniel Flynn):** Let's call this meeting to order. We were waiting for Mr. Prue, who I understand is going to join us in progress as we start to deal with some of the issues.

Welcome to those members of the public who are just joining us for the first time.

At the previous meeting, held on Monday, the committee decided it would prefer to set aside what is page 15 of your motions, amending section 80. We have an amendment before us under section 80. There's actually a page 15 and a page 16, and you'll find they are exactly the same, duplicate motions, so it's really only the one amendment.

**Mr. Ernie Hardeman (Oxford):** Mr. Chairman, I suggest that when we put something aside, we leave it aside until we get back to it. That's the normal process. We go through the bill and then go back to those that were set down. That's particularly acute in this case, because Mr. Prue inquired about it when it was set down. I think it would be inappropriate to deal with this section in the absence of Mr. Prue. He has just arrived. But I still think it should be reverted back to when we have gone through the sections we have yet to deal with.

**Mr. Brad Duguid (Scarborough Centre):** On a point of order, Mr. Chair: I would not agree with that suggestion. I would suggest that we held it down to this meeting. We're here at this meeting now and we should deal with it now. As an aside, I think a number of people have taken an interest in this particular clause and a later clause who would probably like some reassurance that this is done. Rather than have them wait until the end of the meeting, until 6 o'clock, when we deal with it, I suggest we get on with it now. That was certainly the intention when we held it down.

**The Chair:** Thank you. I've heard both sides. Let me just talk to the clerk for a second.

**Mr. Hardeman:** Chair, I don't believe it's anyone's privilege to go back and forth in the bill as they see fit. We have started the process of following it through consecutively. We unanimously agreed to set down that section to be referred to at a later time, and I believe that that later time is when we have followed the normal process that the committee normally follows. I think it would require unanimous consent to do that differently.

**The Chair:** After conferring with the clerk, there is no requirement that we deal with it at the end of the meeting. If there were no members of the public here, I'd agree with you. We are all going to be here when the motion is dealt with, in any sequence. Out of respect to those members of the public who have joined us today, I think it would be timely to deal with this now.

Mr. Hardeman, anything else?

**Mr. Hardeman:** I still believe we have a process that we should be following. If someone wants to change that, I think they'd have to make a motion to do that, and the only motion that would be in order would be unanimous consent to move back. Having said that, I have no problem with giving that unanimous consent at this time so we can deal with that section.

**The Chair:** There we go. Okay.

*Interjection.*

**Mr. Hardeman:** It was at the time, when Mr. Prue wasn't here.

**The Chair:** That's right. Let's try it in a friendly manner, then. Do we have unanimous consent to deal with the issue that appears to have generated some interest from the public at this time?

**Mr. Michael Prue (Beaches-East York):** That would be numbers 15, 16, 56 and 57?

**The Chair:** That's right, but 15 and 16 are actually the same. You'll find that they're identical motions, so it's really the one amendment.

We're not dealing with pages 56 and 57 right now. We're dealing with the motion that was set aside by the committee at its meeting on Monday, on pages 15 and 16. You'll find they're identical, so that is really only one amendment.

**Mr. Duguid:** On a point of order, Mr. Chair: Mr. Prue's suggestion to deal with 56 and 57 at the same time would make sense as well, just as a courtesy to the public here, because that's the other motion that I know there's an interest in. It's up to the committee what they want to do, but that's not a bad suggestion.



**The Chair:** Are you suggesting, Mr. Prue, that we move those items up?

**Mr. Prue:** If we're extending a courtesy, as we just have, to the people here, they're here for the other motions as well. They are every bit as and probably more important to them than the first two. If they want to hear them—I assume you do; they're all nodding that they want to hear them—

**The Chair:** You're free to move that.

**Mr. Prue:** Then I move that we deal with all of those motions, those being 15, 16, 56 and 57, and then revert back to the ordinary numbering for the balance of the day.

**The Chair:** I think that would meet with the pleasure of the audience and the committee. Do we have unanimous consent to deal with things in that sequence?

**Mr. Hardeman:** Before we do, I'm not sure what we're doing. I need some explanation of which motions.

**The Chair:** The motion that was first envisioned to be dealt with today is the motion you'll find on page 15. Mr. Prue has just suggested that because of the relationship between that motion on page 15, which was set aside on Monday, and the motions on page 56 and 57, we deal with them all while the members of the public interested in those particular items are present, and then they can excuse themselves, should they choose to do so, for the remainder of the meeting.

**Mr. Hardeman:** You have unanimous consent to deal with them at the same time. I just need broad clarification to understand why they're identical motions and that far apart in the bill.

**The Chair:** You're talking about the motions on pages 15 and 16?

**Mr. Hardeman:** Yes. I'm told that motions 15 and 16 are the ones we stood down at the previous meeting. Now, to deal with that same topic, we're dealing with motions 56 and 57.

**Mr. Duguid:** I can explain, Mr. Chair, if I may.

**The Chair:** Go ahead.

**Mr. Duguid:** Motions 15 and 16 deal with the Municipal Act, which deals with all municipalities except Toronto. Motions 56 and 57 concern the City of Toronto Act and would only be applicable to Toronto. That's the difference and that's why they're in different places.

**The Chair:** Okay? We probably will not have to deal with 16 at all, as it's identical to the one on 15.

Let's start with the amendment being put forward on page 15.

**Mr. Vic Dhillon (Brampton West–Mississauga):** I move that section 156 of the Municipal Act, 2001, as set out in section 80 of schedule A to the bill, be amended by adding the following subsections:

"Airports

"(3) A business licensing bylaw of a municipality with respect to the owners and drivers of taxicabs does not apply in respect of taxicabs conveying property or passengers from any point within the municipality to an airport situated outside the municipality if,

"(a) the airport is owned and operated by the crown in right of Canada and the taxicab bears a valid and subsisting plate issued in respect of the airport under the government airport concession operations regulations made under the Department of Transport Act (Canada); or

"(b) the airport is operated by a corporation or other body designated by the Governor in Council as a designated airport authority under the Airport Transfer (Miscellaneous Matters) Act (Canada) and the taxicab bears a valid and subsisting permit or licence issued by the designated airport authority.

"Mississauga

"(4) No business licensing bylaw passed by the city of Mississauga with respect to the owners and drivers of taxicabs applies in respect of taxicabs, other than taxicabs licensed by the city, engaged in the conveyance of goods or passengers, if the conveyance commenced at the Lester B. Pearson International Airport."

1610

**The Chair:** Thank you, Mr. Dhillon. Speaking to the motion?

**Mr. Dhillon:** Basically, this amendment would allow the cars, taxis and limos operating at Pearson airport to carry on business as they have been. They've established a clientele over the past many, many years, so they'd be able to carry on business as they have been. A considerable investment has been made by the owners and drivers, and this is an amendment to make sure their rights are protected as they were in the past.

**Mr. Duguid:** We've heard from a number of stakeholders on this, and we're of the view that this approach is supportable. No municipalities other than the city of Toronto have sought any licensing powers with regard to airport limousines or taxis. One of the issues put forth by the stakeholders was the possibility of a hodgepodge of licensing that could take place—unlikely, but could take place across the greater Toronto area. We're in support of this motion. I just want to make sure it's clarified on the record that this motion does not in any way affect the city of Toronto or the powers that are part of the City of Toronto Act. There's a subsequent motion coming up after this that would have dealt with the City of Toronto Act. Mr. Rinaldi has indicated to me that he'll be withdrawing that. Just to clarify, there will be no impact on the powers that have been put forward to the city of Toronto under the City of Toronto Act with regard to licensing.

I just want to put on the record—I want to invite a staff member up and ask a question just to make sure the interpretation of this is very clear, because there has been some confusion over the last 48 hours about this motion.

**The Chair:** Thank you.

**Mr. Ralph Walton:** Ralph Walton, with the Ministry of Municipal Affairs and Housing.

**Mr. Duguid:** Mr. Walton, could you just confirm that this amendment doesn't in any way affect the powers to Toronto under the City of Toronto Act.



**Mr. Walton:** Motion 15 is an amendment to the Municipal Act. It does not apply to the city of Toronto.

**Mr. Duguid:** That's all I needed. Thank you.

**The Chair:** Further speakers? Mr. Hardeman, then Mr. Prue.

**Mr. Hardeman:** I have a couple of questions. First of all, I understand that this motion is identical to 155(2) of the present Municipal Act. In the amendments put forward by government at the start of this committee, it seems it was deemed that this part of the Municipal Act was no longer necessary. I wonder if I could get some explanation of what prompted the need to put it back.

**Mr. Duguid:** In listening to a number of stakeholders regarding this, it's a power that we had given in the City of Toronto Act to the city of Toronto to be able to license unfettered in this particular area. We didn't hear from any other municipalities that they had any desire—in fact, we couldn't imagine too many scenarios where they would have a desire to be involved in this anyway. Given concerns expressed by one of the stakeholders, we thought it makes sense to not include this. Originally, we were putting forward this particular licensing provision identical to what Toronto had asked for, but upon thinking and hearing from other stakeholders, we thought we didn't need to have an identical provision in the Municipal Act that applies to everybody but Toronto.

**Mr. Hardeman:** Since it was this way in the original Municipal Act, and the City of Toronto Act not yet being in effect, if this part had been left in the Municipal Act and if the Municipal Act still applied to Toronto, which it always did up until the City of Toronto Act, this would not then have—this would maintain the status quo for everybody in the province. Is that right?

**Mr. Duguid:** I'm sorry. You're going to have to repeat that question. I didn't quite pick up the—

**Mr. Hardeman:** If the people of the city of Toronto had to adhere to the Municipal Act, then this would put everything back to the way it presently is?

**Mr. Duguid:** Once the City of Toronto Act is proclaimed, and we've indicated that would likely be in early January—if we were not to have done the City of Toronto Act and if it were to not be proclaimed, the city of Toronto would then have been part of the Municipal Act, but that's not going to be the case here.

**Mr. Hardeman:** Using that scenario, the resolution brings us back to the status quo until January 1.

**Mr. Duguid:** This resolution will have the effect of bringing us back to the status quo for every municipality except Toronto. Toronto will be governed under the City of Toronto Act.

**Mr. Hardeman:** But right now, the City of Toronto Act is not proclaimed. So if this one was proclaimed this afternoon, it would bring us right back to the status quo.

**Mr. Duguid:** Well, the status quo exists today until this is proclaimed anyway.

**Mr. Hardeman:** Chair, I will need a little explanation that's slightly beyond this motion. It was referred to that motion 16 will be withdrawn. As I read them, that other resolution puts this same thing into the City of Toronto

Act. That's the one that's going to be withdrawn. Is that right?

**Mr. Duguid:** That's correct. If the other motion carried, it would have withdrawn some of the powers that we had given the city of Toronto with regard to licensing.

**Mr. Hardeman:** Just one more, then I'll give Mr. Prue some time. I have a few other questions, but one more.

Monday, when this was set down, I had all the information that has been made available to me and to the public in terms of what needed to be done to amend the Municipal Act. The only presentation we had during committee was from the Airport Taxicab (Pearson Airport) Association, the airport limo operators. Would the presentations we heard have made the government decide we were going to withdraw the other resolution that deals with the city of Toronto? I want to know where we got the idea.

**Mr. Duguid:** The resolution to deal with the city of Toronto was not a government motion. It was moved, I think somewhat inadvertently, by a member. It was not a government motion.

**Mr. Hardeman:** It was not a government motion?

**Mr. Duguid:** No.

**Mr. Hardeman:** I thought we had parties: NDP motions, Conservative motions and government motions. I didn't know we had individuals within the parties bringing in separate motions.

**Mr. Duguid:** Through the standing orders, members are free to move motions on their own. Like I said, my understanding is that this particular motion will be withdrawn. It was really moved inadvertently. It was a motion that somebody was considering. It was moved inadvertently and placed on the agenda.

**The Chair:** Technically, it hasn't been moved.

**Mr. Duguid:** That's correct. It hasn't even been moved; it has just been circulating.

**Mr. Hardeman:** So the question on that topic really is, was it inadvertently put in by the member, who was then told by the government to take it out? Or is he taking it out because he's got more information now and he knows he was wrong to have put it in?

**Mr. Duguid:** It's not proper for me to speak for the member, but the member had thought this was something we all had agreed to have moved and moved it, I suspect somewhat inadvertently, when it was something we hadn't. I use the word "moved," but it's the wrong word. It was circulated inadvertently and submitted inadvertently. As such, he's planning to withdraw it.

**Mr. Hardeman:** One final question: If this information made the light come on all of a sudden for the member that he didn't really want to introduce the other motion, what prompted the government to ask to set this section down, when both motions were there, so we could talk about it more and put it off till today?

**Mr. Duguid:** As I said, when I set it down, it wasn't something that was critical to us. We could have moved ahead with it at that time, but we just wanted to take a closer look at it to make sure everything was good with



the motion and that we were all in agreement and that we thought it was the best motion we could put forward.

**Mr. Hardeman:** We'll let Mr. Prue have some time.  
1620

**Mr. Prue:** I'd like to clarify motions 15 and 16. I realize we're only dealing with 15, but they appear to me to be almost identical, or perhaps identical.

**Mr. Duguid:** They are identical.

**Mr. Prue:** But at the top of 15, the one Mr. Dhillon has moved—he has moved 15, not 16—it quite clearly indicates that it came from the pen, or from the fax, at least, of Lou Rinaldi, who I assume is the MPP on this committee. The other one does not state who submitted it. I need to know, is this a government motion, or is this Lou Rinaldi's motion right now before us that you're asking us, through Mr. Dhillon, to pass?

**The Chair:** The clerk probably has a better explanation. I think we're all trying to—

**Mr. Prue:** I'm just seeking the information; it doesn't matter who it comes from.

**The Clerk of the Committee (Ms. Susan Sourial):** It's my error. I had the motion faxed to me and e-mailed to me. In compiling it, I didn't pay attention and put the two in together. But they're exactly the same motion, from the same member. Really, it should only have been the one, and it doesn't matter which one. It's filed as a member's motion, not as a party motion.

**Mr. Prue:** So 16, in any event, no matter what happens to 15, will be ruled by the Chair to be redundant.

**The Clerk of the Committee:** Yes.

**The Chair:** It doesn't even have to be moved. It doesn't have to be withdrawn either.

**Mr. Prue:** Okay. This was taken out, was not anywhere in the act, but under Mr. Rinaldi's authority as a member of the committee it has been included. What was the change of mind? What are you attempting to accomplish by this? It details "Mississauga" at the bottom, and I'm going to get to Mississauga. What do you have in mind here? Is it to ensure that the airport limo drivers have unfettered access to the rest of the GTA, if not to Toronto? Is that what is being accomplished here?

**Mr. Duguid:** To be clear, this would allow the exemption that currently exists that does not provide the authority for municipalities outside of Toronto to engage in the licensing of airport limousines. Within Toronto, that authority would be retained.

**Mr. Prue:** Okay, but let's get to the bottom. It says:  
"Mississauga

"(4) No business licensing bylaw passed by the city of Mississauga with respect to the owners ... of taxicabs applies in respect" of those who go, to put it in a nutshell, into Lester B. Pearson. Are you saying that the city of Mississauga, at this point, cannot attempt to license them?

**Mr. Duguid:** This is the status quo. The reason the city of Mississauga is mentioned specifically is that in the Municipal Act there was an agreement—it's fairly complex, but I think about 15 or so years ago there was an agreement, which had the agreement of Mississauga, to

move forward in this particular way. Mayor McCallion, at committee some time ago, during consideration of a transportation bill—Bill 169, I think; I can't remember the bill number—indicated that she'd prefer to keep things just as they are. Mississauga is mentioned specifically because the airport is located in Mississauga. There were two sections that provided the exemption: one was the specific Mississauga exemption and the other was the rest of the clause, which at one time included all municipalities. When the new City of Toronto Act is proclaimed, it would not include Toronto.

**Mr. Prue:** What would happen if this passes? Let's pick Durham. Durham wants to license who can come in, who can pick up, who can deliver from Pearson airport. They're not included in this. Where do they sit? Under what authority? Under what act?

**Mr. Duguid:** If this motion passes, Durham will not have the ability to license airport limousines.

**Mr. Prue:** I need to know from the parliamentary assistant: Have each of the cities or regions that do licensing in the GTA been told about this new proposal in section 15? Have they been told what you intend to do? This did not come up in any debates. I don't think they were expecting it. They don't know about it. Have they been asked to comment? Has Mr. Rinaldi's proposal been before any of the mayors, the reeves, the councillors, the regional chairs or anyone else in the GTA?

**Mr. Duguid:** I can't speak to the individuals in the municipalities. I know some municipalities have been advised of this. I know, as well, that no municipality has expressed any desire to have the ability to license in this area. The city of Toronto had it under the City of Toronto Act and did not wish to relinquish it, an indication we had from the city during the consultations on the City of Toronto Act and I believe as recently as the last week or so when the issue started to crop up. The city of Toronto is the only municipality that's expressed any desire to have the ability to license. They haven't expressed an intent to use it, but they didn't want any of the provisions that we've provided to them under licensing to be fettered.

**Mr. Prue:** So the city of Toronto has been called, not about resolution 15, but about 56 and 57, and they have expressed an interest?

**Mr. Duguid:** That would be my understanding, yes. So I've been told.

**Mr. Prue:** The city of Toronto doesn't care whether section 15 passes or not?

**Mr. Duguid:** It doesn't impact them at all and I can't imagine they'd have any interest in it.

**Mr. Prue:** But were they polled on this?

**Mr. Duguid:** I wasn't privy to the exact discussions that were held, so I don't know exactly what was discussed, but I would expect the information likely would have been shared with them. As I said, there's no interest for the city of Toronto in 15.

**Mr. Prue:** There are a number of changes, taxicabs being a major one but a number of others also, impacting the City of Toronto Act through this Bill 130. Is it the



intention of the government to proclaim all of those sections involving the City of Toronto Act at the same time? I need to ask, because whatever happens in terms of the taxicabs has to happen with everything else. I don't want the government to say, "Yes, we're going to pass it, but we're going to proclaim different sections and leave this out."

**Mr. Duguid:** To the best of my knowledge, this section, along with most sections of the City of Toronto Act, would be proclaimed at the same time. There are some discussions in this act, and I would have to check with staff to see if there are any implications for the City of Toronto Act in terms of proclamation, because there has been a request from municipalities to have more time, for instance, in the setting of policies. We've asked them to set policies in a series of areas like procurement and other areas like that.

**Mr. Prue:** I'm not asking about all the others. I'm asking about the city of Toronto.

**Mr. Duguid:** I would expect that this particular part of the City of Toronto Act would be proclaimed immediately, but I will refer to staff to make sure there's not a technicality I'm not aware of. Mr. Walton is here and could probably answer that question.

**Mr. Prue:** If he could.

**Mr. Walton:** Could I have your question again, please?

**Mr. Prue:** Are all the portions of the bill that deal with the City of Toronto Act—because I'm still nervous about 56 and 57, although we're dealing with 15—going to be proclaimed at the same time?

**Mr. Walton:** There are two schedules in Bill 130 that immediately impact the city of Toronto. We are having discussions with the government with respect to the scheduling of proclamation. They should be proclaimed at the same time as Bill 53.

**Mr. Prue:** The city of Toronto will have the authority, should they wish, to license the limousine drivers at the airport—or to not license them. I guess it comes right down to that. They'll have that authority. When will they have that authority?

**Mr. Walton:** Upon proclamation.

**Mr. Prue:** And when is the proclamation date?

**Mr. Duguid:** The intent is for early January.

**Mr. Prue:** So it will be virtually immediately.

**Mr. Duguid:** Pretty much.

**Mr. Prue:** Thank you. Those would be my questions.

**The Chair:** Anything else, Mr. Hardeman?

**Mr. Hardeman:** A couple of other questions, Mr. Chair. First of all, just for clarification again, my understanding, up until now at least, was that the reason Mississauga is mentioned differently is because the airport we're talking about is Pearson, which in fact is in Mississauga. Point to point in the municipality would include the airport, so there's a special mention treating the airport traffic differently from the other traffic. It actually deals with traffic inside a single municipality, which would not likely be true for most municipalities. Is that accurate?

1630

**Mr. Duguid:** I think that's part of it. Mississauga had expressed an interest in this back about 15 years ago. I've read a history of this stuff, but I can't remember the exact times. The way it was set up in the Municipal Act was as all levels of government had agreed it would be set up. That's why it's mentioned specifically.

**Mr. Hardeman:** Going back to the issue of what was presented to the committee, for information to help us decide how we should deal with these motions, would the way we're dealing with this amendment, in your opinion, be the right thing according to the airport taxi and limo operators' presentation, as opposed to—let me say it this way: Would they expect that the other amendment would be in it?

**Mr. Duguid:** I don't know exactly what they would be expecting, but they would be in favour of our approving the amendment to the Municipal Act before us right now, yes.

**Mr. Hardeman:** I want to go further, since we are dealing with this in a unique way, dealing with the two, having been told that one is going to be withdrawn. Would they be in favour of the process of only passing one of these, recognizing that the only reason there are two is to make sure that the implications are the same in the City of Toronto Act as they are in the Municipal Act so all the people are being treated the same? Would the taxi and limo operators from the airport be supportive of just passing one of these, in your opinion, or have you checked that out?

**Mr. Duguid:** I hesitate to speak on their behalf, but clearly—you were here for their presentation—the airport limo drivers had expressed concerns about the City of Toronto Act when we dealt with the City of Toronto Act, when they came before the committee, and had expressed concerns about the Municipal Act. We're dealing with their concerns about the Municipal Act. Their concerns about the City of Toronto Act—we had already dealt with those when we dealt with the City of Toronto Act, and I would expect that those concerns remain.

**Mr. Hardeman:** Just to clarify it for me, as I'm not one who understands the business that well—

**Mr. Duguid:** You understand a lot more than you let on.

**Mr. Hardeman:** Does passing this one and not passing the City of Toronto Act in any way inhibit the airport operators from being able to pick up prearranged fares in Toronto and take them to the airport?

**Mr. Duguid:** It gives the city of Toronto the ability to license—and it's not about just this particular sector. It gives them the ability to license, period. What happens with this in terms of the rollout would depend on whether the city of Toronto decides it wants to get into licensing other vehicles like airport limousines. They haven't expressed that desire to date. Whether they will or not will be a decision that we feel they would have to make in terms of whether it's in the interests of their community and the interests of the economy and their city.



**Mr. Hardeman:** Say I'm a taxicab operator licensed to operate out of Pearson. In passing this amendment and withdrawing the other one, does the city of Toronto have an ability to impose or to offer licences in such a way that I would be inhibited from coming into Toronto to pick up a fare and take them to the airport?

**Mr. Duguid:** I hesitate to speculate on what the city of Toronto plans to do or could do, but—

**Mr. Hardeman:** Hypothetically, is it possible?

**Mr. Duguid:** It's possible for the city of Toronto to do a number of things with the new authority it was given under the City of Toronto Act. We've given them new authorities in terms of powers, we've given them alternative sources of revenue, and we've also imposed a number of accountability measures on the city, as you know, through the City of Toronto Act. So it is a different balance in terms of the powers they've been given. We've expressed confidence that the city of Toronto will deal responsibly with these powers. Some of them are such that you could speculate until the cows come home as to what they could do. I think we have to have confidence that our municipal elected officials will deal with these powers responsibly. If the city of Toronto were to deal with something that impacted the provincial interest, as you know, the province retains the ability at that point to intervene. However, that's something I think the province would use very reluctantly and only in extreme circumstances.

**Mr. Hardeman:** I guess I didn't ask my question properly, because the answer doesn't correspond to my question.

**Mr. Duguid:** I thought it did.

**Mr. Hardeman:** If I'm the operator living in Mississauga and operating out of Pearson, could they license it in such a way to discontinue allowing me to pick up a fare in Toronto, and yet the people who are licensed in Toronto, resident in Toronto, could do that and get that exclusively? That could put me right out of business from making that pickup. Could they, hypothetically, license it that way under this legislation?

**Mr. Duguid:** As I said, I really hesitate to talk about what the city of Toronto may or may not do with the new powers they have. But to try to be as clear in my answer as I can, the city of Toronto would have the ability to license just about everything that's within municipal areas. They cannot do so just to accrue revenue. It has to be something to offset costs of a program they're setting up for that particular area or that particular sector. We'll be looking at things in the regulations that would ensure that there has to be a business case to do what they plan to do. There will be some safeguards in what they can do. But in answer to your question, clearly they'll have the ability to license, which means they will have the ability to license, if they chose to, airport limousines within their jurisdiction.

**Mr. Hardeman:** I understand the openness of the licensing regime and the greater ability to give municipal powers and less oversight from the province because they're a mature level of government. The auditor's

report, of course, wouldn't put as much confidence in the local authorities as we've been hearing in this committee. But my question really is about licensing people not in their jurisdiction. As I mentioned, say I live in Mississauga and I have a service coming from Pearson. Will they have the ability to license a non-Toronto business to do business in Toronto just on an in-and-out basis? If the parliamentary assistant is hesitant to answer that, maybe we could get a legal opinion on whether that would be possible.

**Mr. Duguid:** We can get a legal opinion. I'm not hesitant to answer it. The city of Toronto would have the ability to license business that's taking place within Toronto.

**Mr. Hardeman:** Any business?

**Mr. Duguid:** I don't believe there are restrictions in terms of businesses, but like I said, there will be safeguards. They can only license in cost recovery for programs, so you're not going to get the city of Toronto licensing in areas that have nothing to do with a program they're setting up that's of public benefit. For instance, if they were going to license a particular sector to set up an inspection regime, they would have the ability to do that, provided it didn't impact the provincial interest.

**Mr. Hardeman:** I'm getting even more concerned now.

**The Chair:** Why don't we go to staff? You asked for a legal opinion. Why don't we try that first? Could somebody come forward and assist?

**Ms. Elaine Ross:** Elaine Ross, Ministry of Municipal Affairs and Housing, legal services. I believe the question is, if the City of Toronto Act comes into force, would the city be able to license any business? Is that the question?

**Mr. Hardeman:** Any business, even though it would not be based in their municipality.

**Ms. Ross:** They would be able to license people who carry on business in the municipality, subject to certain exemptions set out in the act and subject to any exemptions we put in a regulation, if a regulation is made. Right now, if the act is proclaimed as is, it doesn't have exemptions that relate to licensing taxis.

**Mr. Hardeman:** So the question—and it's quite hypothetical, I understand. The city of Toronto, under the present City of Toronto Act, can license every truck coming into the city if they're bringing product into the city or picking up product in the city, even though they have a provincial licence?

1640

**Ms. Ross:** If a business is carrying on business in the city, the city would have the authority to license them. Then it's the question of, what is "carrying on business"?

**Mr. Hardeman:** Well, who would get to decide whether they're carrying on business in the city?

**Ms. Ross:** The city would make that decision, and if somebody didn't agree with it and felt that they had somehow gone beyond their power, I assume they would challenge it in a court.



**Mr. Hardeman:** So the second question on that same thing, going back to the cost—the parliamentary assistant says not to worry, because the licence fee must somehow correspond to the cost of the operation of the entity. Could they set up the licence fee in such a way that non-residents have to pay three times as much and the whole cost of the regime is borne by people not part of their electorate?

**Ms. Ross:** Well, the licence fee does have to be cost recovery, so they can't make up artificial costs for the purpose of selecting a particular type of business that they want to put out of business. But they do have the ability of setting different fees for different types of businesses. I don't know if I'm answering your question.

**Mr. Hardeman:** You're suggesting that they can charge a fee twice as high for a car coming in from Pearson that is stationed in Mississauga than for a car coming into Pearson from Toronto. They could double the fee.

**Ms. Ross:** They would have to, when they're setting their fees, stick to cost recovery, so what they charge would have to relate—

**Mr. Hardeman:** But the cost recovery is aggregate, right? The cost of recovery is aggregate for the function. They could actually eliminate the fees for Toronto cars and put it all on Mississauga cars.

**Ms. Ross:** If they licensed a class of business, they would have to choose a fee that reflected the cost of licensing that business. They would have to satisfy themselves that somehow the cost of licensing taxis that come from a different place is different. They have to first of all try and make it a class, and then, assuming it's a class, they'd have to try to manoeuvre the fees so that they were different, and I'm not sure how they could do that.

**Mr. Hardeman:** That brings me to my next question: How does the act envision the enforcement of this in total? How do you deal with a truck coming in and delivering or picking up product at a factory now being able to be licensed by the city? In fairness, in the real world, the best place to raise taxes, if you're a municipal politician—I've been there—is from people you're not responsible to at election time, and that would be all the people coming in to do business and then going out again. It seems to me that would automatically be a provincial interest, and that if that was to happen the province would do something about it. The reason I'm going here is that it seems to me that this is the time to do something about it, that that's not the type of thing you would be allowed to license: people from outside coming in and doing business and leaving again in a single trip.

**Ms. Ross:** Well, the city has to, in planning its licensing bylaws, decide who it's going to charge and how they're going to charge them and how they're going to enforce their bylaw. I think what happens with these sorts of bylaws is that they tend to choose taxis that are picking up within the municipality.

**The Chair:** Are there any further questions, Mr. Hardeman?

**Mr. Prue:** While you're thinking, I have some.

**Mr. Hardeman:** Go ahead. I'm thinking.

**The Chair:** Mr. Prue.

**Mr. Prue:** I just want to be really clear about this. At present, virtually no taxi in Ontario can poach in another municipality. A taxi in Toronto isn't supposed to go and pick up people in Mississauga and drive them to Durham. That's not supposed to happen, because they're not licensed.

**Ms. Ross:** Right now, municipalities have the ability to license businesses. They have a broad licensing power already, and they can license businesses that are carrying on business within that municipality, and that would include taxis.

**Mr. Prue:** That would include taxis, so it's highly unlikely that a taxi company from Durham is going to start picking up people in Mississauga, not just because of the distance but also because they're not licensed to do business there. You don't know?

**Ms. Ross:** I couldn't speculate on who they're likely to license.

**Mr. Prue:** Okay. But in terms of this bill, should the bill pass, the city of Toronto will have the authority to license. I'm not as concerned about their authority to license as my friend from the Progressive Conservatives. But will they have the authority to charge fees to non-Toronto limousine or taxicab services that do business in Toronto? The reason I'm asking is that a taxi that goes to Pearson airport pays \$15, I believe, to go in the lineup to pick up a prearranged flight. Will the city of Toronto have the authority to charge the limousine services \$15 to come into Toronto to pick up a prearranged flight the same way, tit for tat? Can they do it? Not will they, but can they?

**Ms. Ross:** If they require a licence, they can certainly charge a licence fee, and the licence fee would be cost recovery.

**Mr. Prue:** And if the cost recovery at Pearson airport is \$15, it would stand to reason that \$15 could be charged to pick up someone in Toronto.

**Ms. Ross:** I can't speculate on what the city of Toronto is going to charge for its licence fee, but it can charge a licence fee and it can be cost recovery.

**Mr. Prue:** For the licence itself. And can they charge user fees for coming in and picking up, as they do at Pearson airport?

**Ms. Ross:** There is a separate power, a user fee power, the same as exists in the Municipal Act today, that allows municipalities to charge fees to any person for services and activities within the city.

**Mr. Prue:** And everything we're debating is all for naught anyway, because the minister, at his or her own volition, can render redundant any bylaw or set of policies for 18 months under this act. That's also in there.

**Ms. Ross:** There is a regulation-making authority that allows the minister to provide that, yes, the municipality does not have the power for a period of 18 months.

**Mr. Prue:** So we have here what has developed into—Mr. Rinaldi, you should be very proud. You have caused a conundrum here today, for hours and hours, and



upset taxi drivers and everything. We have a situation here that is highly speculative. Is that a fair thing to say? It depends on what the city of Toronto does with it?

**The Chair:** Are these questions still for staff, Mr. Prue?

**Mr. Prue:** Yes, they are.

**The Chair:** Well, let's make them appropriate for staff.

**Mr. Prue:** They are.

**The Chair:** I'm not sure, from the response you didn't get, that they were appropriate. Maybe you would like to reword it.

**Mr. Prue:** The motion we have before us allows for the status quo. You probably had nothing to do with the motion. Did you vet it?

**Ms. Ross:** I've reviewed the motion.

**Mr. Prue:** You've reviewed the motion.

**Ms. Ross:** I've reviewed all the motions.

**Mr. Prue:** So you've vetted the motion and you know what it does. Does it maintain the status quo, as has been suggested, outside of Toronto?

**Ms. Ross:** Yes, outside of Toronto.

**Mr. Prue:** But it does not in any way affect the city of Toronto, its authorities or what the city might do.

**Ms. Ross:** It does not affect the city of Toronto.

**Mr. Prue:** Did you have an opportunity, in vetting this, to discuss this with any municipal or regional councils in the 905?

**Ms. Ross:** That wouldn't be my role. I'm the lawyer with the ministry.

**Mr. Prue:** Okay. Do you know if anyone did?

**Ms. Ross:** I don't know.

**Mr. Prue:** Thank you. Those are my questions.

**The Chair:** Thank you, Mr. Prue. Anything—*Interjection.*

**The Chair:** Are you serious?

**Mr. Hardeman:** I'll just finish off by saying that I recognize—and the reason for my debate is not to in any way circumvent or change the status quo. I just want to make sure that I and everyone else understands.

In this instance, we've seen a lot of changes, in the last two weeks or whatever it has been since we started these hearings, in how we deal with this issue. First there was no motion, then there were two motions, and now we're going back to one motion. Including all the people who are going to be impacted by this, there seems to be great confusion. I have some notes here from both groups being impacted, both very concerned for different reasons, but until the two motions were there, everybody seemed to be reasonably happy with the status quo. But the two motions—thank you, Lou—have caused a lot of people to have another look at it. That's why I thought it was very important to bring out what I think are possibilities that may not only hurt one side but that will be detrimental to everyone involved. The government is cautious of those, that if things like that happen—it's quite possible that the city council will decide, as they start their budget, that they want to tax everything that

moves to meet their budget needs. I wanted to make sure that all those points were shown on the record.

I have absolutely no doubt, with the amount of work the parliamentary assistant has done on this issue, that he is going to instruct his side of the table to vote on it exactly as he suggests. That will dictate that the motion we presently have before us will pass and the other motion will be withdrawn, as he committed to doing. Having said that, I have no further debate on this issue.

1650

**Mr. Prue:** Just in terms of debate—I don't have any other questions—I am reluctant to vote even for this motion, I have to tell you. I'm not sure why it's here. I take the parliamentary assistant at his word. But this motion has irritated a whole group of people, both those who operate at Pearson airport and the taxicab drivers in Toronto. It has irritated them.

I am not sure what this purports to do. I'm not sure whether it's a housekeeping measure. I'm not sure why it specifically refers to Mississauga, although I do know that the majority of the lands contained around the airport are in Mississauga, although some are in Toronto. That would surprise you to know, that some of them are on the other side of the road, mostly the hotel properties and some of the parking lots and things, but they are.

In any event, I am reluctant to vote for this. I know the government will use its majority to pass it. I am thankful, though, that you'll withdraw the second section that's going to impact the taxi drivers in Toronto because they have had a pretty raw deal for a long time. I don't know how many of the members were here in the previous government, but they surrounded this building on many occasions honking horns, and they've done it to your government as well.

The sweetheart deal that has been made over the years with the airport limousine drivers has really cost the Toronto taxi drivers a lot of money and business and everything else. I, for one, will be very happy if the city of Toronto uses the authority that is going to be granted under the City of Toronto Act in a very responsible way to ensure that the city of Toronto cab drivers have fairness at last, that if they are required to pay \$15 to pick up a passenger on a prearranged arrangement at Pearson airport, the limousine drivers are going to have to pay the same amount. I'm not trying to gouge them, but you cannot make one law for one group without imposing it on another. It has caused, quite literally, hardship to the Toronto cab drivers. They are, after all, the ambassadors of this city. Any visitor who comes here, I can guarantee you, will get into a Toronto cab.

We have to respect the men and women who do this thankless and sometimes dangerous job and we cannot do it by putting impediments in their way. I'm thankful that 56 and 57 are going to be withdrawn, but I have a nagging doubt in my mind about what this motion by Mr. Rinaldi is going to do or is supposed to do. I cannot vote for it. I would ask for a recorded vote.

**The Chair:** Any further speakers? Seeing none, I'll put the question. Shall the motion carry?



**Ayes**

Brownell, Dhillon, Duguid, Peterson, Rinaldi.

**Nays**

Hardeman, Prue.

**The Chair:** The motion is carried.

Moving on, shall section 80, as amended, carry? Those in favour? Those opposed? Section 80 is carried.

Moving on now to section 91.

**Mr. Duguid:** Mr. Chair, on a point of order: Just to clarify for the people in the audience, the taxi and limo issues have been dealt with?

**The Chair:** That's right.

**Mr. Prue:** I think you need to formally withdraw numbers 56 and 57 so they know that's been done.

**Mr. Duguid:** They were never moved. Maybe you could just clarify for the audience that those sections that were circulated were never moved, so they're not before the committee.

**Mr. Dhillon:** On a point of order, Mr. Chair: Can I request an expedited copy of Hansard?

**The Chair:** You can certainly ask for one. We'll make that request on your behalf.

**Mr. Dhillon:** Thank you.

**The Chair:** The motions aren't going to be placed on the floor, as I understand it. If you want them formally withdrawn, we could deal with it that way. It's entirely up to you.

**Mr. Prue:** I think the taxi people want to know before they leave the room that they're not going to be debated. If they're withdrawn, they can't be.

**Mr. Duguid:** They can't be withdrawn if they're not before us. They haven't been moved.

**Mr. Prue:** I have it in my package.

**The Chair:** Just to make it very clear for everybody, there was unanimous consent to deal with these prior to dealing with other ones, so we are going to move to section 17, the motions being referred to as 56 and 57. If a member would like to formally withdraw those? Mr. Rinaldi.

**Mr. Lou Rinaldi (Northumberland):** I will withdraw motions 56 and 57.

**The Chair:** Thank you. Those motions have been withdrawn. Any further speakers? Seeing none, thank you very much.

So we're clear, we've dealt with all issues this afternoon that pertain to the taxi industry and the limousine industry in particular. You're all welcome to stay. It's fascinating stuff. You're all welcome to leave. If you'd like us to take a two-minute break while you exit, that would be great. I'd ask that any conversations take place outside the room, though.

**Mr. Hardeman:** Mr. Chairman, I would like to assure everyone who was here that what we have done, after all this time with the two different resolutions, is that we are

right back to the status quo we had before these hearings started.

*Interruption.*

**The Chair:** Quiet.

If you'd like to take any conversations outside the room, I'd love you to have them. I don't want this to turn into a to-and-fro between the audience and the committee.

**Mr. Prue:** I wonder if I could move a two-minute recess?

**The Chair:** That's what I suggested right from the start.

Prior to that, we were dealing with item 17. The clerk is suggesting that to formalize that, we put the question on section 17 so it is dealt with while everybody is here.

Shall section 17 carry? Those in favour? Those opposed? Section 17 is carried.

Thank you.

*The committee recessed from 1656 to 1701.*

**The Chair:** Okay. That's a healthy two minutes, I think. I call the meeting back to order.

Picking up where we left off on Monday, we'll be dealing with section 91. That would be page 21. The first motion is a government motion.

**Mr. Duguid:** I'll start off with the first one, and then we'll rotate.

I move that subsection 218(4) of the Municipal Act, 2001, as set out in subsection 91(3) of schedule A to the bill, be struck out and the following substituted:

"Term of office

"(4) Without limiting sections 9, 10 and 11, those sections authorize an upper-tier municipality to change the term of office of an appointed head of council so long as the new term does not extend beyond the term of council."

A short explanation: This is something that was requested specifically by the Western Ontario Wardens' Caucus and the Association of Municipal Managers, Clerks and Treasurers. It allows upper-tier municipalities to appoint their heads of council, often the wardens of a county, to any term not extending beyond the term of office. The way our current bill was written, they'd only be able to do it for one-year appointments or the full term. This gives them a little more flexibility, something they requested and something we on this side of the committee fully support.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** I don't disagree with the motion. As a friendly amendment, I would propose that we go to the next one, which is a PC motion. It's a bit clearer than the government motion. There is a bit of a concern. The way the government motion is written doesn't prohibit the ability to change terms of office while the head of council is there. They can set it at any time. It doesn't say when they must set it. They could decide that, for whatever reason, they don't like the present one and could pass a motion to have a reconsideration of the appointment. Ours is only slightly different in the wording. It does exactly the same thing, but they set the term that



they elect the person for as they're doing it. They don't have the ability to go back, during the term they've set, and change it.

**The Chair:** Any further speakers?

**Mr. Prue:** I'd just ask the government to comment. Mr. Hardeman has made a case as to why his is a better motion. They both do the same thing. I want to support both of them, but I want the best one to go forward. Has the government looked at Mr. Hardeman's motion? Why have you put in a different one? Are they just two ships crossing in the night? I want to make sure one of them passes. He has made a pretty good case why his is better. You tell me why it's not.

**Mr. Duguid:** I'm not sure that Mr. Hardeman's motion, if it were to pass, would be the end of municipal government as we know it in Ontario. At the same time, it gets into that issue of whether the upper-tier municipality has the ability to reappoint sometime during the term, I suppose. I guess my preference at this point would be to stay out of that argument, because we haven't really been able to consider it fully.

*Interjections.*

**Mr. Duguid:** Maybe I just haven't had the chance to consider it fully.

**The Chair:** Mr. Hardeman?

**Mr. Hardeman:** I guess I would equate it with picking the Speaker of the House. There's a process in place that after an election, when we don't have a Speaker, at the first meeting of the new Legislature, the Legislature collectively elects a new Speaker. The Speaker, in our case, sits for the term of office, but that doesn't prohibit the same process from being used if, for whatever reason, there is a vacancy in the Speaker's chair and you must replace the Speaker. But it doesn't say that you can change that term of Speaker during the term of the Legislature.

I think our motion just says that when you elect the warden—in fairness, in most of Ontario in the county government, the warden is the speaker of county council; they don't have any powers beyond being head of council. Wardens are not elected directly by the people; they're picked by county councillors. In my interpretation of it, and maybe we could ask the legal branch to give us some comments on it, when it says, "authorize an upper-tier municipality to change the term of office of an appointed head of council so long as the new term does not extend beyond the term of council," that would tell me that they could do that at any point in time, where the next resolution is amending to strike out, "so long as the term is either one year or the same as the term of council," at the end substituting, "to a term of any length, so long as it does not exceed the term of council." So at the start of each term of office, they can make that decision as to what term of office they're going to have.

**The Chair:** Were you asking somebody from staff to come forward, Mr. Hardeman? Would you like somebody to come forward?

**Mr. Hardeman:** Yes.

**The Chair:** Did you understand the question, Mr. Gray?

**Mr. Scott Gray:** I think so. I think what's the better motion is the general question. I think I prefer the government motion. The first reaction—when I look at the government motion, it says, "the term does not extend beyond the term of council." The other motion says, "does not exceed the term of council." I mean, it looks like whenever that term is being set, it could be four years. I see nothing in either motion that says the term has to be set at the time of the first meeting of council. They both say that at the first meeting of council you can appoint the first warden for one year, and after the end of one year, you can appoint the next warden for two years, and for the last year, the only option is to appoint them for one year.

The government motion makes it clear that, whatever the term is, it can't go past the end of the term of council. The opposition motion suggests to me that after three years of running, you could still set a four-year term, because it says you can set a term as long as it does not exceed the term of council. The term of council is four years, you appoint a warden after three years, so you could have one running over into the next term of office of council.

**The Chair:** Any further questions?

**Mr. Hardeman:** Far be it from me to argue with a lawyer, but I don't know how one could interpret the last line in our motion, "so long as it does not exceed the term of council," not "a term," the generic term but, in fact, the council.

**Mr. Gray:** It's just more ambiguous; that's all I'm saying. It "does not exceed the term of council." The term of council is four years. The government motion says, "does not extend beyond the term of council." So there's something that comes to an end. What comes to the end is a four-year cycle.

1710

**Mr. Hardeman:** A further question, then, again to the legal branch. The municipality can "change the term of office of an appointed head of council so long as the new term...." If we're going to get that generic about whether it's the council, does that mean that at any meeting when council comes together, they could decide to change the head of council? There is no stipulation there of when that's to be done or that it has to be set. The upper-tier municipality can "change the term of office of an appointed head of council so long as the new term does not extend...." So they could wake up any morning and decide they don't like me anymore.

**Mr. Gray:** I guess the section does provide that—what section is that? If you're making changes under 218, those can only come into force—you have to do it before the start of the election year. Subsection 219(2) says that a bylaw passed under 218—no, that doesn't apply, does it? Is it (3)? Oh, yes:

"(3) Despite subsection (2), a bylaw passed under section 218 does not come into force until the day the new council is organized following,



“(a) the first regular election following the passing of the bylaw.”

If you're going to change the terms of office, you have to do that before the start of the election year, just like if you're going to change some other aspect of the composition of council. This year is an election year, 2006, so it would have to be before 2006 that you pass a bylaw to say that the term of the warden of the county for the next four years is going to be one year, two years and one year; one year and three years; or four years; whatever the case might be.

Having now focused on that section, this turn of phrase, “does not exceed the term of council” or “does not extend beyond the term of council,” probably doesn't have any difference in meaning, because you have to decide what the change is before the start of the election year.

**Mr. Hardeman:** If there was a need to fill the seat of the head of council, you'd go through the same process. This section, then, has to apply beyond the first meeting of the new council.

**Mr. Gray:** You mean if there's a vacancy.

**Mr. Hardeman:** You would still need to fill it under this system, so the term of council does apply.

**Mr. Gray:** Oh, yes, but the term of council has to be set before. I think that's the point you were making earlier. The term of council has to be pre-set before council is actually sitting there.

**Mr. Hardeman:** Well, Mr. Chairman, I was very sincere in wanting the government to make it a better bill, but if it's against their wishes, we'll carry on.

**The Chair:** Point made, okay.

Dealing with the government motion on page 21, any further speakers? If not, all those in favour? Those opposed? That motion is carried.

As a result, the PC motion on page 22 would be out of order.

Going on to the PC motion on page 23, Mr. Hardeman.

**Mr. Hardeman:** I move that section 91 of schedule A to the bill be amended by adding the following subsection:

“(4) Section 218 of the act is amended by adding the following subsection:

“Region of Niagara

“(9) Despite any provision of this act or any other act, the regional chair of the region of Niagara shall be directly elected by general vote in the regular elections held in 2010 and in regular elections in later years.”

This is a fairly straightforward amendment. We have a number of regions presently in the province that have directly elected regional chairs. We've had some regions in past municipal elections that have had that on as a referendum on the ballot, that they were looking to have that included.

The people in a lot of communities feel that direct election gives a better accountability for the regional chair and for wardens of the county. They don't feel it appropriate that 30 people get to decide who's going to

be head of council, particularly when you look at the new rewording of the Municipal Act, where it's giving more power to the head of a council. They feel that they should be directly elected, so it was put forward that the region of Niagara should have them directly elected.

The other problem, and it's evident in a number of municipalities, is where we have the person elected from a council itself, where then the municipality whose member gets elected as warden does not have the same representation on council as they were initially to have, because the head of council, of course, represents all of the county or the region, as opposed to just their own municipality. That does not apply to the region of Niagara, because they elect outside of council. When I'm referring to “directly from council,” that's mostly in county governments, where the wardens are elected directly from council. If you have a council like we have in Oxford, that municipality's only representative will likely be head of all the county, and that does not give the same representation to the rest of the municipality for the local issues. I guess that's why I'm in support of this, based on what I've seen happen in my local municipality. I believe the people have a right to have the region represented—the head of the region representing them and given an opportunity to vote.

**The Chair:** Thank you, Mr. Hardeman. Mr. Prue.

**Mr. Prue:** I just have a question of the mover. I listened to all of the debate, and maybe I missed it, but did somebody come forward from the regional municipality of Niagara and ask for this? I don't remember anybody asking for it. I don't remember seeing a letter or correspondence. Did I miss it?

**Mr. Hardeman:** I am not aware. I did sit through all of the hearings, and I am not aware. I was requested to put this amendment forward by a resident of the region of Niagara.

**The Chair:** Thank you. Mr. Prue, you've got the floor.

**Mr. Prue:** I don't think I can support this. If this had come from the regional municipality of Niagara or if I had seen a groundswell or if that person had even sent me the letter to explain why they wanted it—with all respect, I can't vote for this. It may be a good idea. I do believe in direct democracy. I believe what Halton has done recently and gone to the directly elected regional chair is an important thing. I prefer that over non-elected people being the regional chair, as we do have in some instances. Having said that, without any input from the regional municipality requesting this, I think this is a bit of a stretch. Unfortunately, to my colleague, I can't support it.

**The Chair:** Thank you, Mr. Prue. Mr. Duguid.

**Mr. Duguid:** Mr. Prue is doing my work for me here. I couldn't agree more. I don't recall any request coming forward from any deputant on this. There hasn't really been any consultation, that I'm aware of, on this issue. It may well be that there's a consensus in the region of Niagara on this, but if there is, the government members at this point in time aren't aware of it.



This is something that could happen and it's something that the minister, I believe, has the power to do if it were to come forward in the appropriate way, but to do it in this way might be seen as trying to sneak something in, and I wouldn't be in favour of doing that.

**Mr. Hardeman:** There has been—I was going to say considerable debate. I can't speak to the extent of it, but there has been debate in the region of Niagara about this issue. It was pointed out that they already do it this way in Waterloo and Halton.

On November 27, there was an editorial in the St. Catharines Standard concerning this: "Anyone holding a political job with such power and responsibilities should have a direct mandate from the electorate," and, "We support this move. It should be up to the electorate to decide who fills the post. The position is too powerful and high-profile to be left to the whims of council."

Then it describes: "Currently only 30 people (regional councillors and Niagara mayors) out of 426,550 Niagara residents have a direct say over who will be selected as the regional chair.

"The regional chair is the head of a government that now spends some \$740 million per year, a budget three times as much as those of St. Catharines, Niagara Falls and Welland combined. The region is directly responsible for the delivery of big ticket items such as police, waste management, ambulance services, regional roads and public health."

This is the editorial in the paper talking about why they think the public should have a say in who heads that council. I'm also informed that the regional chair of Niagara presently is not opposed to this move. He says it would be an interesting debate.

1720

**The Chair:** Thank you, Mr. Hardeman.

All those in favour of the motion? All those opposed? That motion is lost.

Shall section 91, as amended, carry? Those in favour? Those opposed? Section 91 is carried.

No amendments are before us on sections 92 to 95. We'll collapse those, if that's the wish of the committee, deal with them all at the same time. Sections 92 to 95: All those in favour? Those opposed? Those sections are carried.

Moving on to section 96, motion 24: It's a government motion. Mr. Brownell.

**Mr. Jim Brownell (Stormont-Dundas-Charlottenburgh):** I move that subsection 223.13(1) of the Municipal Act, 2001, as set out in section 96 of schedule A to the bill, be amended by striking out "investigate" and substituting "investigate in an independent manner."

**Mr. Duguid:** By way of explanation, Mr. Chair, this is in keeping with some of the recommendations that came forward from the Ombudsman in discussing the need that these duties be carried out in an independent manner. That's what this particular motion is designed to do. It clarifies that the ombudsman is to function in an independent manner.

**The Chair:** Very good. Any speakers to this?

**Mr. Hardeman:** It seems to me that saying it doesn't make it so. We're changing nothing about how it's done. The Ombudsman says we should have an independent ombudsman or investigator, but to just put that in and say they should be independent—unless it gives some direction of what independence means, I don't know how anyone would be assured by this that it will be independent. If it still allows that person, who's now doing it independently, to be an employee of council, I don't know how the public could see that as independence. Due to the whole nature of the bill, there will be no avenue for the public to be involved in whether it's independent or not, because the very fact that the individual is appointed prohibits that person from going to the Ontario Ombudsman to ask for an independent review.

To me, just saying it doesn't cut it. There needs to be more direction as to how independent they must be, that they must be appointed separately from council, that it can't be, as was suggested on a very negative note by the Ombudsman, just hiring a lawyer who—no disrespect to lawyers—is obligated to work for the people who hire them. Obviously, an independent investigation by a hired lawyer is not going to suffice for the public to be assured that they have an independent ombudsman.

I think we need more in the bill to declare independence than to say it should be independent. I don't think anybody thought it wasn't already assumed in the bill that they were going to be independent; it's just that there was nothing in there to show it was happening. Now we're going to put it in words, but there is still nothing there that shows it's going to be happening.

**The Chair:** Any further speakers?

**Mr. Prue:** I always look at amendments to see whether or not they cause any harm. Quite frankly, I don't think this causes any harm. I agree with what Mr. Hardeman has to say, but it doesn't cause any harm. We can just leave in "investigate" or we can say "investigate in an independent manner." Whether it changes what actually happens—I don't think this is going to change it in any great way. To me, it doesn't matter whether it passes or not, but it gives me some tiny bit of comfort that the government wants this individual to be independent, so I guess I'm going to support it. But I do acknowledge that Mr. Hardeman has made a good point. This isn't going to change the earth, but in the end it's not going to harm it either.

**Mr. Duguid:** I'd just clarify that this is not the only amendment that will discuss the expectations and the independence of the ombudsman. There's a subsequent amendment, which we'll speak to later on.

**Mr. Hardeman:** I appreciate the comments from the parliamentary assistant. I haven't looked through any other amendments to see where we're going, but I'm happy to hear that there are going to be more amendments to deal with this. I guess I would ask, more to deal with directing the independence?

**Mr. Duguid:** We'll get to it in two amendments, Mr. Chair. Maybe it would be best, in the interests of time, to speak to it then.



**The Chair:** Anything else, Mr. Prue? No? All those in favour of the motion? Those opposed? That motion is carried.

Moving on to the PC motion on page 25: Mr. Hardeman.

**Mr. Hardeman:** I move that section 223.13 of the Municipal Act, 2001, as set out in section 96 of schedule A to the bill, be amended by adding the following subsection:

“Joint appointment

“(1.1) Two or more municipalities may jointly appoint an ombudsman under subsection (1).”

One of the areas that we had considerable discussions on, from the Ombudsman and from all the other presenters, was that when you looked at the bill, it was more likely that the larger municipalities would be appointing their own ombudsmen and their own investigations and so forth, but smaller municipalities would not likely be in a position to be able to do that. If it's going to be available to some municipalities, we should do everything we can to make it available to all municipalities. Particularly if we look at the issue of independence, if, as the previous amendment put forward, we're going to have an independent investigation, it would seem unnecessary to make sure they were working for only one municipality. There's no reason why two or three or, in the case of my home community of Oxford county, eight municipalities couldn't have an ombudsman office that would do the work for all nine municipalities. This allows that to happen. It doesn't direct anything. The government keeps pointing out that they want to recognize them as a mature level of government. It seems to me that how they provide this service should not be the biggest issue with the government. I think it makes a lot of sense to approve this.

**The Chair:** Any further speakers to the PC motion?

**Mr. Duguid:** We don't disagree with the idea or concept of municipalities jointly appointing ombudsmen. In fact, it's something that may well happen down the road. The legislation totally allows this to happen, so this particular amendment is not necessary. I don't like putting amendments into legislation if they're not required, because you never know how they could be interpreted down the road. As it stands now, the legislation totally allows municipalities to share ombudsmen, just as the current legislation allows municipalities to share clerks and treasurers. The amendment's not necessary.

**The Chair:** Any further speakers?

**Mr. Prue:** Could you point out where that is true in the legislation so I can verify that and support your position?

**Mr. Duguid:** Rather than myself fuddle through the legislation, we'll have staff confirm that for you.

**Mr. Prue:** If the staff can tell me where it's contained, in what section of the act this is already allowed so that the amendment is redundant, then I even think Mr. Hardeman would accept it, if it's there.

**Mr. Hardeman:** Yes.

**Mr. Gray:** There is no section in the act that says you can have joint appointments for clerks or treasurers or any other position. What you have is authority to appoint officers, and there's nothing that says a clerk of one municipality can't be a clerk of another municipality. As long as both municipalities accept it, they can appoint anybody they want to be their clerk. Call it a natural person power; call it whatever you want. You have the power to appoint a person. There's no prohibition on having one person be—when I lived in Petrolia for a short time, there was one office in Petrolia and a clerk-treasurer who sat there, and she was the clerk-treasurer for three separate townships at the same time. There is no specific authority for that either.

**Mr. Prue:** He's answered my question. Back to Mr. Hardeman.

**Mr. Hardeman:** I just want clarification. I totally agree with Mr. Prue: If I'm convinced that it can be totally shared, as is suggested, I don't have any problem with it. The reason for this amendment is because in the last bill we went through, the issue of having a—I forget what the position was, but it was in the Planning Act, and in order to appoint someone, they were not allowed to share. We tried to get an amendment that they could share, and it was decided that, no, no, that was inappropriate. I really had concerns that this was going to be the same thing. As long as the record shows, as was just stated, that there would be no prohibition on having one ombudsman who would do the work for all the municipalities in a certain area, then I have no problem with it, and I'd withdraw the motion.

1730

**The Chair:** Withdraw it? Okay. Thank you. The motion on 25 is withdrawn.

Moving on to page 26, we have a government motion.

**Mr. Rinaldi:** I move that section 223.13 of the Municipal Act, 2001, as set out in section 96 of schedule A to the bill, be amended by adding the following subsections:

“Matters to which municipality is to have regard

“(2.1) In appointing the ombudsman and in assigning powers and duties to him or her, the municipality shall have regard to, among other matters, the importance of the matters listed in subsection (2.3).

“Same, ombudsman

“(2.2) In carrying out his or her functions under subsection (1), the ombudsman shall have regard to, among other matters, the importance of the matters listed in subsection (2.3).

“Same

“(2.3) The matters referred to in subsections (2.1) and (2.2) are,

“(a) the ombudsman's independence and impartiality;

“(b) confidentiality with respect to the ombudsman's activities; and

“(c) the credibility of the ombudsman's investigative process.”

**The Chair:** Any speakers from the government side?



**Mr. Duguid:** A short explanation, Mr. Chair. What these amendments do is require the municipality to have regard to the important principles of independence, impartiality, confidentiality and a credible investigation process when appointing and assigning powers and duties to an ombudsman. They also require that municipal ombudsmen themselves have regard to these principles when carrying out their functions.

This is part of the four cornerstones of the ombudsman functions that the Ombudsman spoke to when he was here. I want to take this opportunity to thank the Ombudsman for his input on this. I have full confidence, and always have, that municipalities would have taken into consideration all of these principles. At least what this does is ensure that they have to consider them, have regard to them, and we have confidence in municipalities that they will deal appropriately with these new powers.

**The Chair:** Any further speakers?

**Mr. Hardeman:** I guess I just want to comment on, and I've been quite a supporter in the past of, "shall have regard to." But I just caution and question that it wasn't too long ago, again, in the planning documents, that we didn't think "have regard to," when municipalities have to deal with the provincial policy statement, was strong enough. The province decided it had to be "shall be consistent with." I would think that this issue is as important to the people of Ontario as the planning documents are as relates to the provincial policy statement. So I'm a little concerned with just "have regard to," because that has been interpreted in the past as—we considered it, but we decided that, in this case, it wasn't the driving force. So I have some concern about that.

I think we're just slightly short of meeting the suggestions of the Ombudsman as it relates to providing that impartiality with the appointment, as opposed to asking the ombudsperson appointed at the time to take these items into consideration as they're making decisions. Is their job dependent on them making a decision favourable to municipal council? This doesn't take away from that. But I do want to commend them. This is a long ways from where we were, and we appreciate that, with some assistance on everybody's part, we at least got this far.

**The Chair:** All those in favour of the motion on the floor? Those opposed? That motion is carried.

Moving on to the PC motion on page 27, Mr. Hardeman.

**Mr. Hardeman:** I move that subsection 223.13(4) of the Municipal Act, 2001, as set out in section 96 of schedule A to the bill, be amended by striking out "or" at the end of clause (a) and by adding the following clause:

"(a.1) in respect of which an investigation has been commenced under the Ombudsman Act; or"

This is an amendment. The Ombudsman, in his presentation, was quite clear that he had concern about looking at the process where, if you have an ombudsman, then that's the end of the line for folks; if you don't have an ombudsman, if it's investigating the closed-meeting

issue, then the Ombudsman of Ontario can be contacted and he can do the work. His concern is that if there is a problem, the municipality could, in the interim, appoint an ombudsman and then that application could no longer stay with the provincial Ombudsman. So this is to prevent that from happening, that once it's been referred to the provincial Ombudsman, it would stay there regardless of what the municipality did, and for people who were not taking advantage of it, it would have absolutely no impact at any point in time.

**The Chair:** Thank you, Mr. Hardeman. Any further speakers?

**Mr. Duguid:** Only that the government doesn't have any intention of allowing ombudsmen to be the fallback for municipalities. Municipalities will decide whether they appoint an ombudsman or not for this particular matter. We're not talking about the provision of open meetings at this particular point in the bill, which is a different scenario. Here, we're not planning on appointing the Ombudsman to be the ombudsman of municipalities. That makes this particular motion I guess either moot or not supportable.

**The Chair:** Any further speakers?

**Mr. Hardeman:** I stand to be corrected, but the Ombudsman was quite clear that he had concern about the open-meeting provision in the bill and reverting to the Ontario Ombudsman. The act directs that a municipality that does not appoint an investigator themselves can—a citizen can ask the Ontario Ombudsman to look into that. The Ombudsman said that he had concerns about removing his jurisdiction by just appointing the investigator and then taking that case out of the hands of the Ombudsman. So I think this would clear that up, that that couldn't happen.

**The Chair:** Any further speakers? All those in favour of the motion? Those opposed? That motion loses.

There's going to be a motion on 27.1, but we're going to deal with the motion on page 28 first.

**Mr. Hardeman:** I move that subsection 223.13(7) of the Municipal Act, 2001, as set out in section 96 of schedule A to the bill, be struck out and the following substituted:

"Arm's length relationship

"(3) The ombudsman shall be a person who is at arm's length from council and the municipality and shall not be a municipal employee."

Again, I think this really deals with the whole issue of the impartiality. We don't believe it's good enough to just tell the ombudsman, "Now, you be totally impartial and make sure that the public understands you're totally impartial and at arm's length from the problem," yet their job depends on coming up with a favourable decision. This points out that they must appoint someone as the ombudsman who is at arm's length from the council and, furthermore, that they aren't employed otherwise by the municipality. This would prevent the municipality from appointing the CEO to be the ombudsman for the municipality.

**The Chair:** Any further speakers?



**Mr. Duguid:** We won't be supporting this motion. In a previous motion we've clarified that the ombudsman function is to be independent. In another motion we've clarified that the municipality has to have regard to the principle of independence when appointing and assigning powers and duties to that ombudsman. We feel that those sections cover this off. There are a variety of interpretations to the wording in this motion that could provide some degree of difficulty for municipalities down the road, and we'd rather not complicate that. We have confidence that municipalities will—in fact, when we had AMO before us during the hearings, Mr. Reycraft made it very, very clear municipalities are not going to appoint somebody as an ombudsman who is not independent, and would not get an employee of the corporation or the city or town or village or region to do that. But there are issues in terms of definitions of “employee” that I think we'd rather not get into.

**Mr. Hardeman:** I recognize that the president of AMO, on behalf of all the member municipalities of AMO, was making a presentation and suggested that he would never, nor would any municipality, do anything that would be contrary to the best interests of the people who were being impacted by their decisions. At the same time, we do have a Municipal Act that says that there are restrictions on their closed meetings. If we were so sure, as the government purports to be, that they would never do anything against the best interests of the citizens, then why do we have legislation that restricts meetings at all? Why don't we open it up and say, as we have here at Queen's Park, “Obviously you're an accountable and respected governance and you're a mature government.” Why do we need to tell them what they can put into legal and personnel and what they can't?

1740

At the same time, if you're going to have a third party review for decisions that they make, the public would expect that third party review to be by an impartial third party. If we don't do something like this, the old adage about “You can't fight city hall” is going to be true, because the judge is going to be somebody at city hall, and I don't think that's an appropriate way. I think this is one that should be passed, and I do request a recorded vote on it.

**The Chair:** Any further speakers?

**Mr. Duguid:** I was going to, but I'm not.

**The Chair:** A recorded vote has been requested.

**Mr. Prue:** Is this motion 28?

**The Chair:** We're still on 28, yes. And I misspoke before: It's not motion 27.1 we'll be dealing with next; it's actually 28.1.

**Mr. Prue:** Okay. I just wanted to make sure.

If I could ask Mr. Hardeman, you do not believe that it can be a municipal employee? The Ombudsman of Ontario is a provincial employee. He works for the Legislature. Why can it not be a similar circumstance working for the municipality?

**Mr. Hardeman:** In comparison, the present Ombudsman in Ontario is a servant of the Legislature appointed

for a period of time. Upon his report, he is not putting his livelihood in danger—only at the end of his appointment. The other job cannot be a municipal employee; if this amendment was passed, they can't appoint the CEO, or the CAO, of the municipality to be the ombudsman.

**Mr. Prue:** They did—well, I guess they legally could, but it would be kind of bizarre, don't you think?

**Mr. Hardeman:** Exactly. But the present act, without this amendment, allows it.

**Mr. Prue:** All right. But this also would forbid them from having a municipal employee, somebody who would have rights to—I'm thinking about a municipal employee, maybe a lawyer from a municipality, who was taken for a tenure, a term of council, four years, and appointed by the council with all faith to be the ombudsman, and at the end of four years would either get the job back or they would go out and find another municipal employee. I'm reluctant, because that employee might not then be able to go back to his or her job. Do you understand where I'm trying to get to? I agree with you; it needs to be for a finite period of time, for the period of time of the municipal council. But at the end, if there's a new mayor and a new council and they want a new ombudsman, I don't want that municipal employee to suddenly find themselves on the street. I think they should at least be able to go—that's why I have some problem here where they cannot be a municipal employee.

**Mr. Hardeman:** I think this is the same as it presently is in the Municipal Elections Act. A municipal employee may seek office, hold office, and take a leave of absence. While they're on the leave of absence to run for council, they are not a municipal employee; they are a citizen. They must resign their seat as a municipal employee during the tenure of council. They can go back and work for council again after they've finished being on council, but while they're there, they can't be an employee of the same council so their livelihood depends on that. This motion makes them an independent officer of the council as opposed to an employee who could also be holding another part of the operation in their hands and can't afford to make a negative report to council because their work superintendent's job may depend on it.

**Mr. Prue:** I understand his rationale.

**The Chair:** Thank you, Mr. Prue. Any further speakers? Seeing none, all those in favour of the motion?

**Ayes**

Hardeman, Prue.

**Nays**

Brownell, Dhillon, Duguid, Rinaldi.

**The Chair:** That motion is lost.

We'll just take a very, very short break while we distribute a new motion 28.1. I'd point out to the members that Mr. Richmond has provided you with a final



summary of the recommendations and also the information that was requested on municipal corporations, and it should be on your desk as well.

**Mr. Hardeman:** While they're passing those out, Mr. Chair, and we're on a break, I find it interesting that we are almost on our last day of clause-by-clause and we're now getting a summary of the recommendations. I don't want in any way to apply that negatively to the staff; I apply that to process. It seems kind of redundant to have done all that work and in fact none of us are going to read it because we're pretty well through the debate when the recommendations come from the committee hearings.

**Mr. Prue:** I don't know where you are, Mr. Hardeman, but I see us on 28.1, and we've got what, 83? I think we're a long way from the last day.

**Mr. Hardeman:** I'm a positive thinker.

**The Chair:** Most of us are planning our Monday afternoons.

Okay, we have PC motion 28.1. Mr. Hardeman.

**Mr. Hardeman:** I move that section 223.19 of the Municipal Act, 2001, as set out in section 96 of schedule A to the bill, be amended by adding the following subsection:

"Investigation

"(1.1) A person may request that an investigation of whether a municipality conducted its procurement processes in a fair, open and transparent manner be undertaken,

"(a) by an auditor general referred to in subsection (2); or

"(b) by the Auditor General appointed under the Auditor General Act, if the municipality has not appointed an auditor general referred to in subsection (1)."

This resolution is to point out a concern expressed by a number of the presenters. One that comes to mind was the Ontario Road Builders' Association. They wanted to be sure that all the procurement, the contracting and so forth, particularly as it relates to municipal corporations—all the procurement and tendering—was done in a fair and open manner and that there was something put in place to allow that to be looked into if a citizen believed that was not happening.

**The Chair:** Any further speakers?

**Mr. Prue:** I just want to make sure that this, if it passes, would not be abused. What is to stop anyone who, in a tendering process, doesn't win—I heard some of these people very vociferously saying that no municipality should be allowed to conduct these operations. They don't want them in the operation. I heard some of them say what has been suggested here.

So a municipality, the county of Oxford, sets up a little corporation to build sidewalks maybe—let's just do something simple, put in the sidewalks—and they can undercut and they can do it for a cheaper price than private enterprise or any of the bids. I can see that people who own these companies will then go off and try to take the municipality to court, go through the auditor general process, do the whole thing. I would gladly let them do that provided that if they don't win, I would want them to

pay the costs. I don't want these frivolous and vexatious things because someone else has undercut their bid, and a municipality can undercut their bid just as easily as another private company can, if they have a corporation. I just want to know in the end that this isn't the avenue whereby anyone who's disgruntled in not having their bid taken or who is underbid by a municipal corporation will use this to go out and wreak havoc upon the municipality, because they can do so without costing them a single cent, as I read this. You call in auditors general, you do all kinds of reports—I don't know. I'm a little reluctant to go there unless you assure me that anyone who takes that process, if they don't win, pays the full cost.

1750

**Mr. Hardeman:** I guess in the comments from Mr. Prue, I share your concern that I don't think we want to pass a bill that would make that happen. I would suggest that the very thing that this does is try to prevent all these things from going to court. The Municipal Act tells municipalities to do it in a fair and open process, so I suppose all would be challengeable in a court of law. This is to try and put something in place that can be, "Did or did they not?" and keep it from going to court.

**The Chair:** Any further speakers?

The motion on page 28.1 is on the floor. All those in favour? Those opposed? That motion loses.

Shall section 96, as amended, carry? All those in favour? Those opposed? Carried.

Sections 97 and 98 have no amendments. We can deal with them as a whole, with the approval of the committee. All those in favour of sections 97 and 98? Those opposed? Those sections carry.

Going on to section 99, there's a PC motion on page 29.

**Mr. Hardeman:** I move that section 226.1 of the Municipal Act, 2001, as set out in section 99 of the bill, be amended by striking out "the head of council shall" in the portion before clause (a) and substituting "the head of council may."

We had some discussion about that in my presentation to the Legislative Assembly on second reading of this bill. I think the act, in saying that they "shall," goes a long way in directing heads of council on what they may do that they had no intention of doing and no need to do.

One that comes to mind is "act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally." I support the issue of letting that responsibility rest with the head of council. But the word "shall" means that if a mayor was elected in the last municipal election, and four years from now, when he had to stand up at the all-candidates meeting and say, "I've adequately fulfilled the responsibility as head of council," if he never went to Europe that whole four years to promote the municipality abroad, then someone could suggest that he hadn't fulfilled the obligation. Because it doesn't say he "may"; it says he "shall" do these things.

“Uphold and promote the purposes of the municipality” makes sense.

“Promote public involvement in the municipality’s activities.” How would you measure whether he did or did not do that?

The word “may” says he can do all these things, but there is no obligation to do that.

“Participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.” In fact, if the mayor was indisposed for six months and he couldn’t get out, then he could be held as derelict in duty because he didn’t do the things that this lists.

I think changing the word from “shall” to “may” covers it all off and it allows him to do all those things. I don’t think anybody can take that away from him and, in fact, it wouldn’t hold him to doing all those things in any given term of office.

**The Chair:** Further speakers? Seeing none, all those in favour? Those opposed? That motion is lost.

Mr. Prue, this will be your first amendment.

**Mr. Prue:** My goodness, it took a long time to get to the first one. Oh, you’ve still got to do—

**The Chair:** I’m sorry to cut you off. Shall section 99 carry? Those in favour? Those opposed? That motion is carried.

Do you want to get into it, Michael? We’ve got about four minutes left.

**Mr. Prue:** I think it’s going to take longer than that.

**The Chair:** Why don’t we just call the meeting, then, for the time being and see everybody on Monday afternoon.

We’re adjourned. Thank you.

*The committee adjourned at 1755.*



## CONTENTS

Wednesday 6 December 2006

**Municipal Statute Law Amendment Act, 2006**, Bill 130, *Mr. Gerretsen / Loi de 2006*  
**modifiant des lois concernant les municipalités**, projet de loi 130, *M. Gerretsen* ..... G-993

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### **Chair / Président**

Mr. Kevin Daniel Flynn (Oakville L)

#### **Vice-Chair / Vice-Président**

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)  
Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)  
Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)  
Mr. Kevin Daniel Flynn (Oakville L)  
Mr. Jerry J. Ouellette (Oshawa PC)  
Mr. Tim Peterson (Mississauga South / Mississauga-Sud L)  
Mr. Lou Rinaldi (Northumberland L)  
Mr. Peter Tabuns (Toronto–Danforth ND)  
Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### **Substitutions / Membres remplaçants**

Mr. Ernie Hardeman (Oxford PC)  
Mr. Michael Prue (Beaches–East York / Beaches–York-Est ND)

#### **Also taking part / Autres participants et participantes**

Mr. Ralph Walton, director, municipal governance and structures branch,  
Ms. Elaine Ross, senior counsel, municipal law section,  
Mr. Scott Gray, counsel, municipal law section  
Ministry of Municipal Affairs and Housing

#### **Clerk / Greffière**

Ms. Susan Sourial

#### **Staff / Personnel**

Ms. Cornelia Schuh, legislative counsel

6  
23



G-43

G-43

ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 11 December 2006

# Journal des débats (Hansard)

Lundi 11 décembre 2006

## Standing committee on general government

Municipal Statute Law  
Amendment Act, 2006

## Comité permanent des affaires gouvernementales

Loi de 2006 modifiant des lois  
concernant les municipalités

Chair: Kevin Daniel Flynn  
Clerk: Susan Sourial

Président : Kevin Daniel Flynn  
Greffière : Susan Sourial





### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 11 December 2006

Lundi 11 décembre 2006

*The committee met at 1559 in room 151.*MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT DES LOIS  
CONCERNANT LES MUNICIPALITÉS

Consideration of Bill 130, An Act to amend various Acts in relation to municipalities / Projet de loi 130, Loi modifiant diverses lois en ce qui concerne les municipalités.

**The Chair (Mr. Kevin Daniel Flynn):** If we can come to order. We're meeting today to resume clause-by-clause consideration of Bill 130, An Act to amend various Acts in relation to municipalities.

At the time of the closing of our last meeting, we were on section 100 of the bill. There was an amendment by Mr. Prue on page 30.

**Mr. Michael Prue (Beaches–East York):** I move that subsection 238(6) of the Municipal Act, 2001, as set out in subsection 100(4) of schedule A to the bill, be struck out.

This is a provision that would allow members to participate electronically in council meetings. We do recognize that it is contained within the city of Toronto bill, but I don't know how that one got past me. It did; I didn't see it. I think it is an absolute abomination.

Consider that council is deadlocked. Consider a council of nine members, eight of whom are present, eight of them who hear all the deputants, eight of them who listen to all the staff, eight of them who participate in the meeting, and one is not there. The one who is not there is on vacation, sitting on a beach in Acapulco with a drink in one hand and a cellphone in the other, casting the deciding vote. That's the reality of this. This is the only government that I am aware of in this country, and certainly the only one in this province, that is going to allow people who are not present at the meeting to vote.

If this happens, I can only anticipate that the time will come when a Liberal majority government at some time in the distant future will stand up and do the same thing in the Legislature. "I'm not there, but I'm on my cellphone and I want to vote. I didn't hear any of the debate, I didn't hear anything that was happening, and I'm going to vote." We don't allow it in this Legislature, we don't allow it in the House of Commons, and I, for one, believe

it is a very wrong-headed move to allow it in municipalities.

This is probably coming from some politicians who want that luxury. I'm sure this is politician-generated. It makes it easy for them to try to do their job when they're not there. But the citizens who are in the meeting—and I'm waiting for the first tie vote, when the vote is cast not by the mayor but by someone who's on vacation. I'm waiting for the citizens and the reaction you're going to get from them for having allowed this. People think that skulduggery is afoot, that people don't know how they're voting, that they don't even have the good graces to be in front of those whom they are serving.

I just think it's wrong. I don't know why this government wants to go ahead with this. I will be voting against it. I think it's absolutely the wrong thing to do. I don't know how many other people want to speak, but I want a recorded vote on this.

**The Chair:** Mr. Hardeman and then Mr. Duguid.

**Mr. Hardeman:** In support of striking this out, electronic voting, in my mind, goes a little further to total electronic meetings, where we don't have a necessity to get together in a council meeting and actually have the discussion in a public forum where the public can be part of the discussion. As Mr. Prue mentioned, if you can vote electronically—and of course we have to assume that if one can do it, we all can do it—it doesn't say that you must electronically be part of the discussion. It just says that you can be part of the meeting from somewhere else. As I've said a number of times, I asked a number of people who presented whether they had a need to do things behind closed doors more than they presently could, and there was no one who actually said that they needed more in camera discussions and so forth.

This section goes even one step further than going into a closed meeting. In fact, all the debate the individual who is voting is going to hear is not only behind closed doors, that they went into an in camera meeting, but in fact—I don't want to suggest that they're all going to be in Acapulco, but if that person is there and the only discussion as it relates to that issue is what he did on the beach, I'm not sure that that's the qualified vote that should carry the day.

I find it also interesting—this was discussed somewhat when, on October 10, the minister was speaking to accountability and transparency in this act. He was answering a question. It must have been from Mr.



Duguid, because in the centre of the quotes—the first quote is from Minister Gerretsen. Brad Duguid—from the Hansard—just interjected with “Enhanced Auditor General powers.” That’s the start of it. Then Mr. Gerretsen says, “The enhanced powers of the Auditor General, right. Again, it’s a permissive situation whether or not municipalities want to in effect appoint these officers, in exactly the same way that we have officers here of the Legislative Assembly that report to the assembly and not to the government as such. Those are the areas of greater accountability and transparency that we’re giving municipalities, as currently structured in Bill 130—permissive powers to implement if they so want. Do the other two issues that you’ve mentioned—the electronic voting and the closed meetings—take something away from that? Well, we can discuss that, and we should put parameters around that, quite frankly.”

I would presume from the comments of the minister that he intended to put parameters around this voting. I’m not sure—and maybe the parliamentary assistant in his presentation can answer me—whether in fact that has been done in other amendments, or whether since that time the minister has changed his mind and does not believe that parameters around that issue—and he’s quite clear: “...the electronic voting and the closed meetings—take something away from that? Well, we can discuss that, and we should put parameters around that, quite frankly.” Now, I just wanted to know if that has in fact happened from that discussion.

**Mr. Brad Duguid (Scarborough Centre):** I think it’s time to clarify this. I mean, if I was sitting at home watching as I heard the comments of my colleagues opposite, I would have thought what the government is doing is telling the municipalities that they can just now, any time, decide that anybody anywhere can vote.

That’s not what’s happening here. What’s happening here is that, throughout this bill and throughout the hearings with regard to the City of Toronto Act, we’re showing confidence in the judgment of municipalities to determine, and give them the flexibility they need to ensure that they can make good decisions.

In this case, I am fully confident that a municipality is not going to allow somebody sitting on a beach in Acapulco with a cellphone to vote. That’s just balderdash. That’s just exaggeration to the nth degree.

Mr. Chair, what this does is it gives municipalities, by way of an example—and I know that most of us here are from, generally speaking, fairly urban areas, maybe with the exception of Mr. Hardeman. Mr. Brownell is as well, for the most part. When you’re up in northern Ontario and you have extreme weather conditions and you may have an important decision to make, there may be a case where some municipalities in a situation like that may want to have some flexibility to be able to make those decisions, in particular if there are time elements involved.

What this section does is it gives municipalities like that the ability, the flexibility, to put in place a policy that works for them.

I don’t think I, as a former city of Toronto councillor, want to impose my experiences on communities in northern Ontario. I want to give them the flexibility to be able to decide what’s best for them. And down the road, as technology changes and improves, who knows what the future holds in terms of technology. I think municipalities are more than mature enough to make these decisions as to how best to govern their meetings and how best to ensure that they vote.

In response to Mr. Hardeman’s question about provisions that are being put in place with regard to limitations that we have talked about in the past, there has to be a quorum of members physically present at the meeting, and the power does not apply to closed meetings. So those are two of the areas where limitations are in place.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the presentation. Just a couple of questions. I think it’s a given that it does not apply to closed meetings, because voting cannot take place in closed meetings, so to say that somehow that protects the public is somewhat erroneous.

Of course, they could have the closed meetings without the member present and then they could come out of the closed meeting and have the member from Acapulco actually be part of the vote. Is that not right?

**Mr. Prue:** Yes.

**Mr. Hardeman:** I just ask the question. And the other thing: I wondered other than—and I appreciate the comments, that they have to have the majority of members present before the rest can vote. So on a nine-member council, only four could be away on vacation at the time. Is that—

**Mr. Duguid:** I’m sorry. Say that again?

**Mr. Hardeman:** I said, on a nine-member, only four can be away at the council meeting and still participate with a full council.

1610

**Mr. Duguid:** Four could be away at a council meeting—I don’t know. That would depend on how the municipality decided to implement this. You’re speculating now that a municipality’s not going to have limitations on this type of power or authority.

**Mr. Hardeman:** I wonder if the parliamentary assistant or maybe the legal branch could tell me where in the bill—and I’ve been sitting here trying to find it—it puts limitations. It was suggested that it’s balderdash that someone from Acapulco could be phoning. I’d like to know where in this bill it says that can’t happen.

**Mr. Duguid:** What I’m saying is balderdash is your lack of confidence in municipal politicians to make reasonable and wise decisions and the fact that you seem to think they are not accountable to their own people. Do you really think that any municipal council under this provision would allow the scenarios that you’re describing to take place? I have a lot more confidence in my municipal councillors, obviously, than you do in yours.

**Mr. Hardeman:** Mr. Chairman, it’s not the lack of confidence I have in councillors anywhere in the province of Ontario—



**Mr. Duguid:** It's coming through loud and clear in this particular debate.

**Mr. Hardeman:** I have been in politics long enough to know that if there is a contentious issue and it's going to be dependent on one vote and that vote happens to be away, regardless of where they are, the winning side will try and get that person's vote into this decision all over the province of Ontario. That's why I say that if the province has so much confidence in municipalities, I don't know why we have a Municipal Act, because they could do anything. It would seem to me, if we have confidence in them, why do we need to direct them anywhere? In this case, it's quite possible and plausible that they will need that extra vote and that they would get that from wherever it had to come from in order for that person to be there, to get the vote and break the tie.

If you don't want it to happen, then I see absolutely no reason—like, under what condition does it make sense to have electronic voting from somewhere else in the world to participate in an existing council meeting? To me, there just seems no need for this to be in there if it's not for the things we mentioned.

**Mr. Prue:** I just want to point out a very courageous man in the federal House of Commons from BC, the man who was dying of cancer. He flew halfway across the country in order to cast his vote because the federal House would not allow him to phone it in. We all remember. He was able to do that, and he had to do that or the government would have fallen. I think that if any councillor wants to vote, that councillor should have the wherewithal to be there in front and face squarely his or her electors and look them in the eye and listen to all of the stuff and be accountable and be seen and vote.

I do not believe for a minute—whether they are in Acapulco or in their basement or whether they're on some government business somewhere, they are not in the hearing and they are not in front of the electors who elected them. They are casting a vote out of sight and out of mind, with no one to look at. If you're afraid to look at your electors or if you're not there to look at your electors, then you ought not to be voting.

It's the same as when we stand up in that House. If you're not going to vote, you don't come in, and if they're not going to vote, they shouldn't be—those are the rules. I don't want to give something that potentially can be misused. I'm not saying it will be in every case, but it only has to be misused once or twice and the whole thing will come crashing down and the blame will come right down on this House. The blame will come right down on this Legislature, saying, "You allowed for this." The first time someone misuses it, and they will, because they're human beings out there, then they'll point the finger to today and they'll say, "How could you have been so silly?"

If the brave man could fly—and I'm trying to remember his name—all the way from British Columbia with cancer to cast his vote and die a couple of weeks later, then I think he sets the standard that we all need to live by.

**The Chair:** Further speakers? All those in favour of the motion?

**Mr. Hardeman:** A recorded vote.

#### Ayes

Brownell, Duguid, Kular, Peterson.

#### Nays

Hardeman, Prue.

**Mr. Duguid:** Actually, Mr. Chair, could we retake that vote? I'm sorry. I thought that was the section that we were voting on.

**The Chair:** Okay: unanimous consent. We appear to have had our wires crossed on that one. Do we have unanimous consent?

**Mr. Hardeman:** I think they do.

**Mr. Duguid:** Well, you got your wires crossed too.

#### Interjections.

**The Chair:** I think you guys voted in support of it. It's entirely up to the committee. We need unanimous consent—

**Mr. Prue:** It's now struck out, right?

**The Chair:** Yes, it would be. We need unanimous consent. Okay, moving on.

Shall section 100, as amended, carry? All those in favour? All those opposed? That section is carried.

Moving on to section 101, the clerk informs me that the order to deal with these is that the PC motion on page 32 would be the first motion to move forward on this. Mr. Hardeman.

**Mr. Hardeman:** Page 32 is a government motion; page 31 is the PC motion.

**The Chair:** I'm sorry. Bear with me. We'll deal with the government motion first, on page 32.

**Mr. Jim Brownell (Stormont-Dundas-Charlottenburgh):** I move that subsection 239(3.1) of the Municipal Act, 2001, as set out in subsection 101(1) of schedule A to the bill, be struck out and the following substituted:

"Educational or training sessions

"(3.1) A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:

"1. The meeting is held for the purpose of educating or training the members.

"2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee."

**The Chair:** Speaking to the motion? All those in favour?

**Mr. Hardeman:** I thought we were going to hear an explanation from the government side on the motion?

**The Chair:** Well, no, we weren't, and I called for the—did you want to speak to it?

**Mr. Hardeman:** Yes. This question is to the parliamentary assistant. I gather this is to clarify the issue of



clearly defining what would be allowed in the expansion of the closed meetings part of the bill. But to me, it runs into a problem and it comes to the point where—and the parliamentary assistant has said a number of times that we don't want to put things in the bill that are redundant, that are totally useless, totally red tape, that don't accomplish any single event.

On this one, I want to just go to the presentation that we got from the Ontario Community Newspapers Association. This was the one section where it talked about the expansion of closed meetings. These two were exactly the ones that the independent newspaper organization was opposed to being in closed session. Now it seems they're the only ones left in this closed session. They said if you're going to have training and technical discussions, who better to listen to those discussions and then interpret them to the community so the citizens will have some idea what those discussions were and how council got to the decision they did, recognizing that none of these trainings or technical briefings are secret or need to be kept away from the public for any purpose or any length of time, because they can only be educational and technical and they cannot further the business of the decision-making of council.

I would suggest that one good example would be right now, because municipal elections have just concluded. Councils would have seminars or training or assistance for new councillors. Community Newspapers says that is the exact thing that the public needs to be made more aware of, of how that works, so they understand and can get that message out to the public. I, for one, can't see why any part of councillors' training should be kept out of the sight and the hands of the public. It would seem to me that we would all be well served in the electoral process, in the democratic process, to understand better how politics works and how councils operate in general, as opposed to individual issues.

1620

It just seems so redundant to have the training and education purposes as part of a closed meeting. Mind you, I think you're going to have trouble to get the Toronto Star or the Globe and Mail or any of the newspapers, even the local newspapers, to cover a councillors' training session, but I see absolutely no reason on earth why you would make it so they weren't allowed to do that. So, in support of our community newspapers, I think it would be very advantageous if we did not allow that closed meeting at all, as opposed to just changing it to limit it somewhat, and clarify what it is you can go into closed meetings for.

**Mr. Prue:** I'm not going to support this amendment, although I must state that this amendment is better than what was originally in the bill. It does go some way. But I still feel very uncomfortable with this because it complicates an issue and it introduces the whole idea that we go beyond what is presently an in camera meeting and add some more things. Citizens want fewer closed-door meetings. I have never met a citizen, a citizens' group, a newspaper, an advocate, someone who acts on

behalf of citizens, lawyers, planners, anybody, who wants any type of closed meeting. They need to see that the meeting is transparent. They need to see that the ideas are discussed. They don't want fewer closed meetings. It's the politicians who want fewer closed meetings.

Notwithstanding that this says "educating or training the members," the reality is that at present most municipalities, when they have training sessions, have open meetings. When I was on council in East York, when I was the mayor of East York, and even in the megacity of Toronto, we had open meetings. There weren't many people who attended them—nobody wanted to see the councillors brainstorming much—but they were open, and if somebody wanted to walk in and sit down, well then so be it. If the councillors ask dumb questions, then the councillors ask dumb questions. We all ask dumb questions. We all strive to try to figure it out. Sometimes you use rhetoric and sometimes you use rhetorical questions, and it all makes sense. I don't see that anything is hugely going to be gained here. All it's going to do is make the public more skeptical about the municipal process. Even if it's just something as innocent as an education or training session for members, they are going to be skeptical when they are not allowed into it.

We have had a history in this country and in this province for over 100 years that the meetings are public. It's what makes municipal government so good. It is, in my view, what makes it the best form of government, even better than our provincial one. I don't see watering it down, because I don't see any benefit at all except that some politician somewhere will think that he can ask goofy questions in private that he couldn't ask in public. The people who will be the most hard on him or her for asking goofy questions will be his or her colleagues and not the public, because the public oftentimes won't understand the issue either.

Having said that, I don't intend to vote for this. It's not a deal-breaker for me, but I don't intend to vote for it. I want open meetings, not closed ones.

**Mr. Hardeman:** In final summation on it, I think we've heard quite a number of times this issue of, "We have to go into closed meetings because councillors, particularly new councillors, may want to ask foolish questions and they wouldn't want to do that in public." I think, as Mr. Prue said, likely the harshest critics of foolish questions at one of these seminars would be other elected officials in the meetings.

I'm almost willing to bet in every case that if you had a sizeable group of ratepayers listening to the seminar, there would be someone in that audience who, given the opportunity, would have asked exactly the same question. I don't think, just because we're newly elected officials, that somehow we're going to ask more foolish questions than the general population. I think this would be helpful to the public regardless of the questions. There is likely someone in the audience who would like to hear the answer to that to inform themselves.

Again, I see absolutely no reason for that section to be in. That's why I will be voting against this amendment



and supporting the one that comes before it, which is to just remove the section to not have more closed meetings than what the present act allows.

**Mr. Duguid:** I guess the one thing that somebody who may be listening to this particular debate would be interested in is that what we're talking about here in this legislation is for the first time having an avenue for them to go to if they feel that their local council has inappropriately closed the meeting off and had a secret or private meeting. They'll now have the ability to have an inspector, who may be appointed by their particular municipality, or a fallback of the Ombudsman if a municipality chooses not to appoint an inspector, to give them the ability to lodge a complaint and to have that complaint followed up. That's something that has never existed before. So we'll now have a strengthened ability to—I don't know if I want to use the word "police," but I'll use that word—to police private meetings to ensure that they meet the criteria as set out in the act.

The current act provides a number of areas—legal, property purposes, employee negotiations, labour relations and a number of others—where private meetings are allowed. It's not mandatory, but it's the option of the council to go into private meetings. The only thing being added here to that list is, "for education and training purposes," something that municipalities have asked us for, something that AMO has asked us for, something that we deem reasonable. We don't believe it will be in any way abused. We think it's an appropriate way, if a municipality chooses—they don't have to, but if a municipality thinks that in this particular issue they think it's appropriate for educational and training purposes that it would be more effective to go into an in camera meeting, to engage in that, they have that option, plain and simple.

**The Chair:** Further speakers?

**Mr. Hardeman:** It happens every time that, when I get all this information, I have another question. Is the parliamentary assistant suggesting that somehow expanding the closed meetings is also the impetus for having the investigator being able to look into closed meetings? Is there some suggestion that you couldn't have one without the other?

**Mr. Duguid:** No, not at all.

**Mr. Hardeman:** So you're assuring the people that there is in fact no connection between the ability to go to an investigator and whether we expand the closed meetings to include training.

**Mr. Duguid:** They're two separate issues.

**Mr. Hardeman:** There is no connection between the section of the bill that allows the expansion of closed meetings to include education and training for members and the fact that the bill allows the appointing of an investigator to deal with closed meetings in municipalities.

**Mr. Duguid:** I think the appointment of the investigator is an effort on the part of our government to ensure as much as possible that municipal meetings are transparent where appropriate and that municipalities comply with the legislation that we put in place. The

legislation we put in place is the legislation that we're working on right now, and this is one of the clauses that is part of that.

**Mr. Hardeman:** Again, I support the ability of the municipalities or the ratepayers to go to a short process to make sure that the municipalities are complying with the rules of closed meetings, but again, I want to be assured that there is no connection between that and supporting the expansion of closed meetings.

**Mr. Duguid:** I don't know how many ways I can say there's no connection, but there's no connection.

**The Chair:** Any further speakers?

**Mr. Prue:** A recorded vote, please.

**Mr. Duguid:** Better check this motion before we vote on this, Mr. Chair.

**The Chair:** This is a government motion. It's on page 32.

### Ayes

Brownell, Duguid, Kular, Peterson.

### Nays

Hardeman, Prue.

**The Chair:** That motion is carried.

Moving on now to page 31 of your agenda, or moving back to page 31 of your agenda, is a PC motion.

1630

**Mr. Hardeman:** I move that section 101 of schedule A to the bill be amended (a) by striking out subsection 101(1) of schedule A to the bill; (b) by striking out clause 239(4)(b) of the Municipal Act, 2001, as set out in subsection 101(2) of schedule A to the bill; and (c) by striking out subsection 239(9) of the Municipal Act, 2001, as set out in subsection 101(3) of schedule A to the bill.

This is primarily just a resolution to go back to the status quo of what is allowed in closed meetings and what isn't. The bill speaks about being a bill about transparency. I have asked quite a number of people, quite a number of government representatives and people presenting at this committee and so far I was unable to find one person who would suggest that you could comply with the translation of transparency by in any way expanding the ability to hold meetings excluding the public. This amendment is strictly to go back to the old legal and personnel portion of the present Municipal Act rather than expanding it to the motion that was previously passed.

**Mr. Prue:** I just have a question of the Chair or perhaps of the clerk. If this motion passes, since we've already dealt with government motion number 32, by striking out subsection 101(1) of schedule A to the bill, are we as well striking out what we have just voted on in motion number 32?



**The Chair:** I'll ask the clerk to comment on that. We were going to deal with that with your motion on page 33 as well when it comes up.

**Mr. Prue:** But I need to know, when I'm voting on this one here, whether I am in fact just undoing—

**The Chair:** I understand that, and the clerk is going to answer your question on this one first.

Mr. Prue, I just conferred with the clerk and it is in order to be dealing with it.

**Mr. Prue:** What does it mean to me? If I vote for this, does it mean that I am striking out number 32 that we've just voted for? Because it doesn't exactly say that. This one here has passed. It means that what we've passed we can now vote to strike out. Okay. That's all, thank you.

**The Chair:** Any further speakers? Seeing none, this is a PC motion on page 31.

**Mr. Hardeman:** A recorded vote.

### Ayes

Hardeman, Prue.

### Nays

Brownell, Duguid, Kular, Peterson.

**The Chair:** Moving on to the NDP motion on page 33. Since 32 passed, the advice I have from the clerk is that the motion becomes redundant and would be out of order. Is that correct? Okay.

**Mr. Prue:** That's why I wanted to make sure when I voted.

**The Chair:** Moving on to page 34, Mr. Hardeman, a PC motion.

**Mr. Hardeman:** I move that section 101 of schedule A to the bill be amended by adding the following subsection:

"(0.1) Subsection 239(2) of the act is amended by adding the following clause:

"(f.1) any matter, consideration of which at an open meeting would,

"(i) have an adverse effect on the finances of a municipality or local board,

"(ii) tend to prejudice the reputation or character of any person, unless the person requests an open meeting, or

"(iii) result in the disclosure of records, if disclosure of the records is prohibited under this act, the Municipal Freedom of Information and Protection or Privacy Act or any other act";

This is an amendment directly in relation to the city of London presentation. The city of London spoke at length about the need for more information and direction in the act when dealing with the closed meeting options. This particular amendment would clarify when indeed it would be appropriate to move in camera. I think their problem was that the extension of the provisions to the closed meetings did not deal with some of the challenges

they were presently facing as to defining the old portion of the act.

I know in municipal circles they always just used the comments "legal and personnel"; that implied anything having to do with any legal action the municipalities may or may not be involved in or may foresee being involved in, or anything to do with personnel. They said the definition wasn't clear enough, and they were spending a lot of time and effort at the board to be heard on whether they were actually legally in legal and personnel meetings. This has been put forward as a solution to the problem they faced, at least partly a solution to the problem they faced.

**Mr. Duguid:** Just a quick question to the mover: Do you and your party support this, or are you moving it as a courtesy to the city of London? Do you support this?

**Mr. Hardeman:** Obviously, we have put it forward, so we support it.

**Mr. Duguid:** That's interesting. The member spent a great deal of time talking about our government opening up closed meetings with a potential for education and training. And then he goes and moves a motion which he says he supports, and I believe him, which has the effect of broadening the opportunities for municipal governments to go in camera in three different areas, and very broad areas: one, having "an adverse effect on the finances of a municipality or ... board;" another, an issue that tends to "prejudice the reputation or character of any person, unless the person requests an open meeting;" and the third one, something to do with the Municipal Freedom of Information and Protection of Privacy Act or any other act.

You can't have it both ways, Mr. Hardeman. On one hand, you're criticizing us for allowing for education and training to take place in closed meetings if municipalities want. On the other hand, you're putting in place very broad definitions adding to when municipalities can go in camera. I'm sorry, but you're trying to have it both ways. We're looking at it here and we're shaking our heads and saying that you criticized us for making a small change. I'm not saying this is massive, but it's a heck of a lot more significant and could be interpreted to be a heck of a lot more significant than training and education. We won't be supporting this for that very reason.

**Mr. Hardeman:** I gather from the presentation that the government side isn't going to support it. I would point out that if you read the present Municipal Act and you followed council minutes around the province in the past, you would not need to expand the definition of "legal and personnel" to cover all three of these items. It's already prohibited. If there is information that deals with the freedom of information and privacy act, council is not allowed to disclose that to the public. So if that's what you were going to discuss, it would come under legal and personnel, because legally they can't do that.

If you're talking about "prejudice the reputation or character of any person, unless the person requests an open meeting," in fact, that's personnel. You can go into legal and personnel to do disclosure. The adverse effect would be dealing with property where disclosing that



information would adversely affect the dealings of the municipality. So my contention is—and obviously we're going to disagree on it, to the parliamentary assistant—there's absolutely nothing in this resolution that broadens the scope of the present legal and personnel conditions in the Municipal Act. This clearly defines it so it isn't up to the courts each time to decide whether they did or didn't follow the right rules.

**The Chair:** Any further speakers?

**Mr. Hardeman:** A recorded vote.

### Ayes

Hardeman.

### Nays

Brownell, Duguid, Kular, Peterson.

**The Chair:** That motion loses.

Moving to the NDP motion on page 35, Mr. Prue.

**Mr. Prue:** I move that subsection 101(2) of schedule A to the bill be struck out and the following substituted:

“(2) Subsection 239(4) of the act is repealed and the following substituted:

“Procedure re closed meeting

“(4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

“(a) the fact of the holding of the closed meeting;

“(b) the substantive reason for the meeting being closed; and

“(c) the general nature of the matter to be considered at the closed meeting.

“Same

“(4.1) A resolution under subsection (4) shall not be passed unless,

“(a) there was reasonable notice of the proposed resolution; or

“(b) the resolution explains why notice was abridged or not provided.”

**1640**

What we're asking here is that if a council wants to hold a closed-door meeting, they have to tell the public the reason and the rationale for it. We want the substantive reason for the meeting being closed stated and the public notice of the closed meeting, and if there's no public notice provided, the reason why it was not provided.

Now, I can understand that in some circumstances it will not become apparent until the actual time of the meeting when the council strays into areas in which it must be closed, but when it's known in advance, we think that notice should be provided so that the public is aware that that portion will be closed, and the rationale for it.

We want to make sure that closed council meetings need to be carefully circumscribed. Councils need to be accountable to the public as to why this privilege—and it is a privilege—is being invoked. The motion would

create a more open and publicly accountable approach to holding closed-door meetings.

If I can just state my own experience, in all those years in municipal government, the only time our citizens truly got angry was when decisions were taken behind the wall, where they were not party to it, where they could see not it, where they could not discuss it and where it was not on television. Then, when we came out and simply moved the motion, it made them extremely unhappy.

We did so reluctantly, we did so only when it was necessary to do so, but in the end I firmly believe that wherever possible, citizens should have the right to hear what the politicians are doing. Wherever at all possible, when they cannot be there because of personnel or legal matters or the sale or purchase of land—which are the big ones—that they be told in advance, that a public notice be given, so that they understand what is happening.

**The Chair:** Any further speakers to the NDP motion on page 35?

**Mr. Hardeman:** I will be supporting this, as I think we do need to do it if we're going to have more closed meetings, to clearly define for what purpose and how they must be conducted as best we can.

I do have some problems with a lot of closed meetings when they are for the purposes in the present act, before these amendments. They do come up on very short notice. The topic may very well not have been obvious the week before or even when the meeting was scheduled; that the topic was going to turn to things that would be required under legal, personnel or purchase. So I do have some concerns with the prescriptive nature of it. I think we need to do whatever we can to make sure that there are some lines in the sand as to what is required if you're going to go to in camera meetings.

**Mr. Duguid:** We won't be supporting this. We just don't feel it adds anything substantive to the provisions that already exist in the legislation. Municipalities have to pass a resolution stating that they're going into a closed meeting, as it is. And they also have to state the nature of the matter to be considered at the meeting, prior to the closed meeting being held.

We're also making it mandatory that municipalities develop a notice policy, so we expect that municipalities will be able to consider the appropriate kind of notice. We think they're capable of making that decision, and as a result, we won't be supporting this.

**The Chair:** Any further speakers?

**Mr. Prue:** A recorded vote, please.

### Ayes

Hardeman, Prue.

### Nays

Brownell, Duguid, Kular, Peterson, Racco.

**The Chair:** That motion is lost.

Moving on to page 36. This is a PC motion.



**Mr. Hardeman:** I move that section 101 of schedule A to the bill be amended by adding the following subsection:

“(2.1) clause 239(6)(b) of the act is repealed and the following substituted:

“(b) the vote is,

“(i) for a procedural matter,

“(ii) for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board, or

“(iii) a vote of a committee that has the power only to advise or make recommendations to a municipal council or local board for the sole purpose of referring the matter to the municipal council or local board for deliberation.”

**The Chair:** Mr. Hardeman, are you speaking to it?

**Mr. Hardeman:** This is a similar motion to the previous one from the city of London. If we had had a different result on the previous vote, which would have structured the Municipal Act under its present conditions, this motion would not be required. This is only what they could do in meeting beyond what is presently there.

**The Chair:** Any further speakers? Seeing none, all those in favour of the PC motion on page 36? Those opposed? That motion is lost.

Moving on to the government motion on page 37, Dr. Kular.

**Mr. Kuldip Kular (Bramalea–Gore–Malton–Springdale):** I move that subsections 239(7) and (8) of the Municipal Act, 2001, as set out in subsection 101(3) of schedule A to the bill, be struck out and the following substituted:

“Record of meeting

“(7) A municipality or local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not.

“Same

“(8) The record required by subsection (7) shall be made by,

“(a) the clerk, in the case of a meeting of council; or

“(b) the appropriate officer, in the case of a meeting of a local board or committee.”

**The Chair:** Speaking to the motion, Mr. Duguid?

**Mr. Duguid:** Just a brief explanation. This clarifies that minutes have to be kept for both open and closed-door meetings, because some municipalities have interpreted the existing legislation to not require minutes for closed meetings. I don't know if that was or wasn't the case, but this ensures it's clarified one way or another.

**Mr. Hardeman:** I appreciate that. I know there was quite a bit of debate from the minister too—it could have been with the other act—that a citizen shouldn't worry about what goes on in closed meetings because minutes had to be kept.

This definition, “without note or comment” recording the “decisions and other proceedings at a meeting of the body”: If it doesn't include “note or comment,” in fact it includes absolutely nothing except decisions taken. Of

course, in a municipal council meeting that becomes quite evident. When they pass a motion to take an action, there is a motion there, and the body of the motion includes the event that took place. But if you don't pass a motion in legal and personnel, then what would be left to record in the minutes? I really am confused as to what would be the minutes of a closed meeting if no action was taken: just a list of attendees?

**Mr. Duguid:** I'm not a clerk, and I've got to admit that I haven't read the minutes too frequently of closed meetings that I've been involved in. But I think there are certain general things that they will say as to what they went in for, and they may say a decision—well, you can't take a decision in camera, anyway. The minutes would probably not be able to say much other than that a discussion took place, perhaps attendance. I think we'd need to get a more expert opinion if you wanted to know exactly what those minutes would or wouldn't say.

**Mr. Hardeman:** If I could, I think this is a very important issue, in my mind, as to whether this goes beyond what I always thought, where nothing was written except that which was passed, or whether the clerk can be asked to record what others say. That would not be their note or comment; that would be the discussion that took place. Would the minutes record discussions that took place in a closed meeting or in an open meeting, for that matter?

**Mr. Duguid:** Municipal minutes aren't like Hansard. They're generally just minutes of what took place at meetings. They do talk about attendance. They may talk about motions moved. In this case, I would assume they talk about a discussion being held, and what they could say or couldn't say I'm not quite sure. The clerks would have to determine that. So there'd be no minutes in terms of word verbatim, who said what or anything like that. Generally speaking, that's not done at most municipal governments that I've been privy to. Whether they'd have the option of doing that or not, I'm not sure. I'm really not sure whether that's just the standard that most municipalities have across the province or whether that's a standard they have to adhere to. I'm not an expert on minutes for municipalities, so I really couldn't answer that for sure.

1650

**Mr. Hardeman:** The reason I ask is that it's been a general thought that in fact that doesn't take place, particularly in legal and personnel meetings. But the fact that the government is now defining that minutes must be kept, and if no motions are kept, does that somehow tell the staff that they have to record some of the events as they happen?

I would just use an example. If this was a municipal council meeting and the parliamentary assistant said the government side will not be supporting this motion—not verbatim, because it's not in Hansard—would the minutes of that council meeting say, “Brad Duguid said they would not be supporting the motion,” paraphrasing it as opposed to word for word? Would they record that action?



**Mr. Duguid:** I hesitate to give a definitive answer. My understanding would be no, that that's not the way it would be reported. But keep in mind that this isn't a new provision. It doesn't provide any additional powers to anybody or change any of the current provisions. All it does is clarify what's always been the understanding from the province's perspective under previous governments and under ours under the current legislation. It just clarifies, because some municipalities were interpreting it a little bit differently. I don't know if they were acting differently within it. I'm not aware of any circumstances, but there were some issues in terms of interpretation. So it's just a clarification of the present policy, that minutes are taken when closed-door meetings take place.

**Mr. Hardeman:** But in the present act it's not a requirement to have minutes of closed meetings, is it?

**Mr. Duguid:** My understanding is that that's the provincial—we could go to staff just to see if they're nodding their heads or not.

**The Chair:** Perhaps a member of the staff could come forward.

**Mr. Duguid:** My understanding is that under the current act there would have to be some record taken of the closed meeting.

**Mr. Scott Gray:** Scott Gray, municipal affairs, legal branch. Yes, I think our interpretation of the Municipal Act, as it is written now, is that minutes should be kept of all meetings, whether they're closed or open, but some municipalities have interpreted it as not being required when meetings are closed. This is an effort to say both with council meetings, where that ambiguity exists, as well as with local board meetings, that there will have to be some form of minutes kept. There will obviously be some standard. If challenged, courts will say that minutes have to reach a certain minimum standard. What exactly that is isn't set out in legislation.

**Mr. Hardeman:** Okay, thank you.

**The Chair:** Any further questions?

**Mr. Prue:** Just a comment: I'm going to vote for this. I'm very pleased with this motion, that minutes are kept at closed meetings. Had that happened back in the days of MFP and that famous meeting—I believe Mr. Duguid was probably there too; I know it was late into the night—none of what transpired in the city of Toronto probably would have transpired. I'm voting for it.

**The Chair:** All those in favour of the government motion on page 37? Those opposed? That motion is carried.

Going on to the PC motion on page 38 and continuing on 38a.

**Mr. Hardeman:** I move that section 101 of schedule A to the bill be amended by adding the following subsection:

“(4) Section 239 of the act is amended by adding the following subsections:

“(10) If, on the application of any person, the Superior Court of Justice finds that this section has been contravened, the court may,

“(a) issue a declaratory judgment in relation to the contravention;

“(b) prohibit the continuance or repetition of the contravention; or

“(c) declare void any action that resulted from the contravention.

“(11) In determining whether to make a declaration under clause (10)(c), the Superior Court of Justice shall consider the following factors among other relevant factors:

“1. The extent to which the contravention,

“i. affected the substance of a resolution or bylaw,

“ii. denied or impaired access to any meeting that the public had a right to observe and record, or

“iii. prevented or impaired public knowledge or understanding of the public's business.

“2. Whether voiding the action is a necessary prerequisite to a substantial reconsideration of the matter.

“3. Whether the public interest would be served by voiding the action by considering the prejudice likely to accrue to the public if the action is voided, including the extent to which persons have relied on the validity of the action and the effect that declaring the action void would have on them.”

This is to deal with the London presentation, and this is to put in place a way that the courts would look at the action as it relates to open and closed meetings and how they should deal with the end result of it. And I think it's important; this here is to make sure that the action for something council did doesn't adversely or negatively impact someone in the general public who put faith in that decision that they made, even though it may have been made according to the courts in the wrong way. So this is to put the consequences of their action in the appropriate place, but at the same time do so in a way that would not negatively impact the innocent people who were negatively impacted by it.

**The Chair:** Any further speakers?

**Mr. Duguid:** We won't be supporting this. We don't feel it's necessary. We feel the courts already have these remedies at their disposal and that they'll likely consider these factors. They have the option of considering these factors as it is, so we don't believe this is necessary.

**The Chair:** Any further speakers? Seeing none, all those in favour of the PC motion on 38 and 38a? All those opposed? That motion is lost.

Shall section 101, as amended, carry? Those in favour? Those opposed? Section 101 is carried.

Moving on to section 102, the first motion is an NDP motion on page 39.

**Mr. Prue:** I move that section 102 of schedule A to the bill be struck out and the following substituted:

“102 The act is amended by adding the following section:

“Investigation

“239.1 A person may request that an investigation of whether a municipality or local board has complied with section 239 or a procedure bylaw under subsection 238(2) in respect of a meeting or part of a meeting that



was closed to the public be undertaken by the ombudsman appointed under the Ombudsman Act.”

The rationale for that is this has been requested by citizens’ groups and the Ontario Ombudsman. The amendment would ensure equal opportunity for oversight of municipal councils across the province. Instead, the way it’s set out here, it would be investigated in some locales and would be the purview of the ombudsman and others. This would treat all municipalities in the same manner, and citizens, no matter where they were in Ontario, would know that they had remedy through the ombudsman and the ombudsman would therefore have sole oversight for investigations as to whether the municipality or board has complied with rules pertaining to closed-door meetings.

**The Chair:** Further speakers?

**Mr. Hardeman:** I support this resolution, with some concern. I do believe that, properly instituted, the appropriate way to deal with this issue is with ombudsmen properly appointed as municipal ombudsmen. I think the government has made it quite clear that it feels the municipalities could do an appropriate job of appointing an ombudsman to deal with this so they wouldn’t have to go to the Ontario Ombudsman. But, having seen some of the amendments that we have already dealt with that outline the direction of the approach the municipalities must use to appoint an ombudsman, it doesn’t give me confidence that in fact they will be an independent third party, that the public would have confidence in that when they were appealing to the ombudsman whether the closed meeting was appropriate, that they in fact would be assured that it’s a third party that’s hearing that case as to whether they’re going to win or lose. So I think this here would do that. The Ombudsman pointed out quite clearly in his presentation that he had concerns that the municipalities, where this oversight was required, would be the first ones to appoint their own. So the public would not be able to use the Ontario Ombudsman, and yet it was likely in the area where the situation required the impartiality of an Ombudsman. The Ombudsman felt that if the ombudsman locally wasn’t appointed somewhat to the same standards as the provincial Ombudsman, the provincial Ombudsman should apply to the same—so we would have equal justice for everyone across the province.

1700

I’m not convinced that the ombudsman, in the earlier part of the act, is being appropriately structured, so I believe that this is the answer that would deal with that. For that reason, I’ll be supporting this motion.

**The Chair:** Any further speakers?

**Mr. Duguid:** In short, we believe that municipalities are quite capable of appointing independent investigators to deal with these particular issues. We have confidence that they would use this additional authority in an appropriate way and be accountable to the people they serve.

**The Chair:** Any further speakers? All those in favour of the NDP motion on page 39? Those opposed? That motion is lost.

Moving on to the motion we have before us on page 40, Mr. Racco.

**Mr. Mario G. Racco (Thornhill):** I move that subsection 239.2(1) of the Municipal Act, 2001, as set out in section 102 of schedule A to the bill, be amended by striking out “investigate” and substituting “investigate in an independent manner.”

**Mr. Duguid:** This simply clarifies that an investigator must carry out his or her functions in an independent manner.

**The Chair:** Any further speakers to the government motion on page 40?

**Mr. Hardeman:** Just a question: In the original, before this amendment, is there an assumption there—was it implied that it wouldn’t be an independent investigation? What prompts the need for this amendment?

**Mr. Duguid:** Mr. Hardeman might find this hard to believe, but we do listen to him when he’s here at committee. He expressed concerns about the independence in this particular area, and the Ombudsman made recommendations that we should clarify it. While we assume and I think we’re confident that municipalities would be able to recognize and distinguish what’s independent and what’s not, it’s to clarify it. It just strengthens the idea that the investigator would have to be independent.

**Mr. Hardeman:** Saying it doesn’t make it so. There’s absolutely nothing that’s changed that would make him more independent. It’s just that he’s got to do it in an independent manner.

**Mr. Duguid:** There’s a subsequent motion coming that further defines that independence and how they have to work.

**The Chair:** Any further speakers? Seeing none, all those in favour of the government motion on page 40? Those opposed? That motion is carried.

Moving on to the government motion on page 41, Mr. Brownell.

**Mr. Brownell:** I move that subsection 239.2(2) of the Municipal Act, 2001, as set out in section 102 of schedule A to the bill, be struck out and the following substituted:

“Powers and duties

“(2) Subject to this section, in carrying out his or her functions under subsection (1), the investigator may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality.

“Matters to which municipality is to have regard

“(2.1) In appointing an investigator and in assigning powers and duties to him or her, the municipality shall have regard to, among other matters, the importance of the matters listed in subsection (2.3).

“Same, investigator

“(2.2) In carrying out his or her functions under subsection (1), the investigator shall have regard to, among other matters, the importance of the matters listed in subsection (2.3).

“Same

“(2.3) The matters referred to in subsections (2.1) and (2.2) are,



“(a) the investigator’s independence and impartiality;  
 “(b) confidentiality with respect to the investigator’s activities; and  
 “(c) the credibility of the investigator’s investigative process.”

**Mr. Duguid:** This simply installs the four cornerstones as recommended through the Ombudsman’s discussions with us, similar to what we’ve done previously.

**The Chair:** Further speakers? None. All those in favour of the government motion on 41? Those opposed? The motion is carried.

Shall section 102, as amended, carry? Those in favour? Those opposed? That section is carried.

Sections 103 to 107 have no amendments before us. With the committee’s concurrence, we’ll deal with them as one. Those in favour? Those opposed? They’re carried.

Moving on to section 108. We’re just going to take not a recess, just a big breath.

Just so everybody is clear on this, what the clerk has distributed is a PC motion, 41.1, dealing with section 267. Section 267 of the act is not open. Mr. Hardeman, would you move your motion first and then I’ll go into the information from the clerk after that.

**Mr. Hardeman:** I move that schedule A to the bill be amended by adding the following section:

“108.1 Section 267 of the act is amended by,

“(a) striking out ‘for a period exceeding one month’ in subsection (1); and

“(b) striking out ‘for a period exceeding one month’ in subsection (2).”

**The Chair:** Mr. Hardeman, the clerk informs me that section 267 is not open. In order to deal with this we would need unanimous consent of the committee. Do we have unanimous consent?

**Mr. Duguid:** We’re happy to allow it to come forward.

**Mr. Hardeman:** This section was presented in the presentation from the county of Oxford. It was presented that they wanted the ability to substitute people to sit on county council because of the fact that they only have one member from each municipality on county council, and at times when one person can’t be there, the suggestion was that they be given the authority to substitute members on council. My amendment really doesn’t allow any further substitution on council to what the present act is, save and except that it removes that one-month requirement. Presently, the municipality can, by resolution, appoint a replacement on council providing the present member is going to be away for a month. This would allow that to take away the month. It could be done for a single meeting, but it would still have to be done by council. So one individual could not just appoint someone else from council to go in their stead; it would have to be a prepared process and deal with the issue too. So it isn’t just a fly-by-night, call up in the morning and say, “Joe, I can’t go. Could you go and vote for me?” This would require a decision of the local council to appoint the upper-tier member. It still prohibits the

appointment of heads of council and it just takes away the month or exceeding one month, to make sure that we can do it for a single meeting.

**The Chair:** Further speakers?

**Mr. Duguid:** While there may be issues that can be argued for or against, this provision would affect not just Oxford but a number of different regions and we really haven’t consulted with those regions to see whether this is something they would be interested in or would support. Without being sure of a consensus on this at this point in time, we have trouble supporting it.

**1710**

**Mr. Hardeman:** One of the later restructuring county acts actually does allow the substitution within a county of their members of council. Our amendment intentionally does not allow the individual substitution any time they want. It still keeps everything in place that’s presently in the act. So the only impact it would have on anyone is that they could still stick with the once a month, but they could not—county council meets twice a month, so they could appoint them for one of the meetings instead of both. It’s almost a housekeeping thing.

**The Chair:** Any further speakers? Those in favour of the PC motion on 41.1? Those opposed? That motion is lost.

Moving on: Mr. Hardeman, the PC motion on 41.2 that you have distributed.

**Mr. Hardeman:** I move that schedule A to the bill be amended by adding the following section:

“108.1 Section 267 of the act is amended by adding the following subsection:

“Restrictions

“(2.1) A person may not serve as an alternate member of an upper-tier council under this section unless,

“(a) the person’s appointment as an alternate member specifies the dates or meetings at which the person is authorized to serve as an alternate member of the upper-tier council; and

“(b) notice of the appointment is given in writing to the clerk of the upper-tier municipality and to the public.”

This is a continuation of the same section as to where we took out “one month.” This clearly defines that it must be an appointment from the lower-tier municipality as opposed to an individual choice of the sitting member.

**The Chair:** Any further speakers? All those in favour of the motion on 41.2? Those opposed? That motion is lost.

Shall section 108 carry? Those in favour? Those opposed? Section 108 is carried.

No amendments were brought before us on sections 109 and 110; if we can deal with those both at the same time. Those in favour? Those opposed? Sections 109 and 110 are carried.

Moving on to section 111, page 42. It’s a government motion.

**Mr. Kular:** I move that the paragraph 6 of subsection 270(1) of the Municipal Act, 2001, as set out in section 111 of schedule A to be the bill, be struck out.



**The Chair:** Mr. Duguid?

**Mr. Duguid:** This was an issue raised by a number of the municipalities and AMO. It was a question of concern about potential liability of mixed interpretations of what was meant by property and civil rights. So we've agreed that we'd remove that part from the bill.

**The Chair:** Any further speakers to the government motion on page 42? If none, all those in favour? Those opposed? That motion is carried.

Shall section 111, as amended, carry? Those in favour? Those opposed? That's carried.

There are no amendments before us on sections 112 to 139. We can collapse those and deal with them all at the same time. All those in favour? Those opposed? They are carried.

Moving now to section 140, government motion on page 43.

**Mr. Duguid:** We're going to withdraw this motion. I'll give just a short explanation. Some municipal organizations wanted a change in terminology in the formula used in this section. Our staff have indicated that they'd like some more time for discussions with them. It's not a critical issue; it's a fairly small issue in terms of interpretation. So rather than try to come up with something last minute that may not work, we'll just withdraw the motion.

**The Chair:** Thank you. That motion is withdrawn.

Going on to the government motion on page 44, Mr. Racco.

**Mr. Duguid:** We'll withdraw that as well, Mr. Chair. It's related.

**The Chair:** Okay, that's withdrawn as well.

Moving on to 45.

**Mr. Prue:** We're halfway, Mr. Chair.

**The Chair:** It doesn't feel like that, for some reason.

**Mr. Racco:** I move that subsection 353(6) of the Municipal Act, 2001, as set out in subsection 140(3) of schedule A to the bill, be amended by striking out "10 years" and substituting "seven years."

**The Chair:** Mr. Duguid?

**Mr. Duguid:** This is a request by a number of stakeholders, including the Association of Municipal Managers, Clerks and Treasurers and a number of other organizations that appeared before us, and we agreed to it.

**The Chair:** Any further speakers? All those in favour of the government—oh, Mr. Hardeman?

**Mr. Hardeman:** Since I haven't got the bill right here open to that section, what are we reducing from 10 to seven?

**Mr. Duguid:** It's to do with the share of proceeds from the sale of property that a municipality acquires through vesting after a failed tax sale. It used to be 10 years—well, we were looking at 10 years in our bill, and municipalities said, "That's way too long. Seven years would be more appropriate," and we said, "That's fine."

**The Chair:** All those in favour? Those opposed? That is carried.

Shall section 140, as amended, carry? Those in favour? Those opposed? That motion is carried.

Sections 141 to 145 have no amendments. Those in favour, if we deal with them all at once? Those opposed? They are carried.

Moving on to section 146, it's a government motion on pages 46a and 46b.

**Mr. Brownell:** I move that subsection 361(12) of the Municipal Act, 2001, as set out in section 146 of schedule A to the bill, be struck out and the following substituted:

"Definition

"(12) In this section,

"'tax' includes,

"(a) charges that are imposed under section 208, and

"(b) fees and charges, other than charges described in clause (a), that are imposed under this act and satisfy the conditions set out in paragraphs 1, 2 and 3 of subsection (13).

"Same

"(13) The conditions referred to in clause (b) of the definition of 'tax' in subsection (12) are:

"1. The fees and charges are imposed to raise an amount for at least one of the following purposes:

"i. Promotion of an area as a business or shopping area.

"ii. Improvement, beautification and maintenance of land, buildings and structures of the municipality in the area, beyond that provided at the expense of the municipality generally.

"iii. Interest payable by the municipality on money it borrows for the purposes of subparagraph i or ii.

"2. The fees and charges are imposed on owners of land that is included in the commercial or industrial classes within the meaning of subsection 308(1).

"3. The fees and charges have priority lien status and are added to the tax roll."

**The Chair:** Mr. Duguid?

**Mr. Duguid:** This is a technical amendment for clarification purposes.

**The Chair:** Any speakers? If none, all those in favour? Those opposed? That motion is carried.

Shall section 146, as amended, carry? Those opposed? That is carried.

Sections 147 to 153 have no amendments. Dealing with them all at once, all those in favour? Those opposed? They are carried.

Section 154: There's a government motion on page 47.

**Mr. Kular:** I move that clause 379(7.1)(c) of the Municipal Act, 2001, as set out in subsection 154(4) of schedule A to the bill, be struck out and the following substituted:

"(c) any interest or title acquired by adverse possession by abutting landowners, including the crown in right of Ontario, before registration of the notice of vesting."

**The Chair:** Mr. Duguid?

**Mr. Duguid:** It's just technical.



**The Chair:** Any speakers? Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 154, as amended, carry? Those in favour? Those opposed? Section 154 is carried.

There are no amendments before us on sections 155 to 182. We have concurrence to deal with them all at once. All those in favour? Those opposed? They are carried.

Section 183: page 48.

**Mr. Duguid:** Just quickly, we're recommending that committee vote against this, simply because it was put there as a place marker in case Bill 14 went through as written. There were changes made to Bill 14, so it no longer applies.

1720

**The Chair:** Further speakers?

**Mr. Prue:** Bear with me. I have not been able to find this section yet.

**The Chair:** Section 183 of schedule A.

**Mr. Duguid:** Page 98, I think.

**Mr. Prue:** Page 98, yes; I just got there. Let me just have a look for one second. Section 183(1) says, "This section applies only if Bill 14 (Access to Justice Act, 2006), introduced on October 27, 2005, receives royal assent." Has it received royal assent?

**Mr. Duguid:** I believe it has, but I don't know if there's any justice official here that can—the fact is, it was changed. We'll get clarification for you on that.

**Ms. Elaine Ross:** Elaine Ross, Municipal Affairs and Housing. Yes, Bill 14 did receive royal assent, although I don't think it's been proclaimed. But at the committee hearings, the section that this refers to was removed. So the amendment refers to 75.1 of the Provincial Offences Act and that provision was not passed in Bill 14.

**Mr. Prue:** All right. So this is totally redundant, then?

**Ms. Ross:** Yes.

**The Chair:** Any further speakers? Shall section 183 carry? Those in favour? Those opposed? That motion loses.

Moving on to section 184, this is an NDP recommendation on page 49.

**Mr. Prue:** The reason I'm asking people to vote against section 184 of schedule A: This removes a section of the bill that allows the Lieutenant Governor in Council to make regulations imposing limits on municipal powers under sections 9, 10 and 11 if it is in the provincial interest to do so.

I don't understand the rationale of the government. You keep talking about trusting municipalities to do so many things, but then you're giving with one hand and taking away with the other. Most municipalities were united in their request to remove this section of the bill. They saw it adding a significant element of uncertainty to their decisions. Either the municipalities are a mature level of government, as you keep on saying, or, if you pass this motion, you have to admit they're not. The question is, which one is it to be? Why does the Lieutenant Governor in Council have the right to impose limits on those municipal powers? I know you're going to answer me back with "municipal interest," but surely,

if you trust the municipalities, the 450 or so in this province, you should not be putting this section in the bill.

**The Chair:** Are there any further speakers?

**Mr. Hardeman:** Again, I'm agreeing with my colleague Mr. Prue. I suppose, apart from all the individual parts of the bill, this is the one that takes it all away. There is no place in the bill that is safe from intrusion, where Big Brother will still be looking over their shoulder, because they have this section in the bill. It doesn't matter what happens: If the province deems that it would be of provincial interest, they don't even have to explain what that interest might be. They can, by regulation, override anything a municipality does. As was said, I don't think there was anybody in the whole process who presented to the committee who suggested that that was a good idea, that "what we really want is the right to do things, but we still want the provincial government to be the arbitrator, shall we say, of all our decisions. In case they don't like one, they can, by regulation, overturn it."

Again, I've heard it a dozen times if I've heard it once: "They're a mature level of government. We have trust in them," even at times suggesting that this side of the table doesn't have confidence in municipalities. I find that hard to reconcile with this section, to say that the government does, because this section absolutely takes away all the confidence that you've told us you have, that anything in the bill that does not suit the government the Premier's office, by regulation, can change and not adhere to the bill at all.

Again, as was mentioned, it takes away the confidence that municipalities need to show that when they make decisions based on the letter of the law, that law isn't going to change after they've made the decision, contrary to their decision. I think we should not be supporting this section.

**Mr. Duguid:** Our government has a responsibility to protect the provincial interest for the people of Ontario. While this kind of provision, I'm sure, would be used reluctantly and probably not very often, if at all, by any government that may happen to be in office, we feel it's important that the people of Ontario are protected and to ensure that we can address any unforeseen circumstances or consequences that may impact the public provincial interest.

**The Chair:** Any further speakers?

**Mr. Prue:** Just on a recorded vote.

**The Chair:** A recorded vote. On page 49, you have an NDP recommendation. Shall section 184 carry?

#### Ayes

Brownell, Duguid, Kular, Peterson, Racco.

#### Nays

Hardeman, Prue.

**The Chair:** That loses. I'm sorry; it carries.



**Mr. Duguid:** We're all getting tired. It's been a long day.

**The Chair:** Sections 185 and 186 have no amendments before us. Those in favour? Those opposed? They are carried.

Moving on to section 187 on page 50, it's a government motion.

**Mr. Racco:** I move that section 457.2 of the Municipal Act, 2001, as set out in section 187 of schedule A to the bill, be struck out and the following substituted:

"Deemed bylaw re powers and duties

"457.2(1) This section applies if a person or body, other than a municipal services board, ceases to be authorized to exercise powers or perform duties on behalf of, or in relation to, a municipality by virtue of the coming into force of any provision of schedule A to the Municipal Statute Law Amendment Act, 2006.

"Same

"(2) On the day on which the applicable provision comes into force, a municipality is deemed to have passed any bylaw necessary under this act to give the person or body any power or duty,

"(a) that the municipality is capable of giving to the person or body under this act; and

"(b) that the person or body was authorized to exercise or perform, on behalf of or in relation to the municipality, immediately before that day.

"Same

"(3) If the deemed bylaw is a delegation bylaw, it is also deemed to provide that both the municipality and the delegate can exercise the delegated powers.

"Amend or repeal

"(4) The municipality may amend or repeal the deemed bylaw."

**The Chair:** Thank you, Mr. Racco. Mr. Duguid?

**Mr. Duguid:** It's just a transitional carry-over provision. An example would be maybe inspector powers or something like that. It ensures that during the transition that inspector would be able to continue to do the work that they do under the authorities of the current provisions until the municipality passes the appropriate policies.

**Mr. Hardeman:** To the parliamentary assistant, on (3) near the bottom of the page: Is that a change from previously where it said that a municipality, once they delegated the authority, could not exercise that same authority and now, under this amendment, they can exercise the authority that they gave away to someone else?

**Mr. Duguid:** It clarifies, in the transition period, that the authority that somebody currently has exists until the municipality passes something different.

**Mr. Hardeman:** Let me understand it.

**Mr. Duguid:** I believe the proclamation of the act is what they're talking about. When this act is proclaimed, it means that if you've got an inspector—I'm using this as an example; it's hypothetical. If an inspector has certain powers, those powers will continue until the

municipality passes a bylaw that may be a policy in that particular area, or something like that.

It's just transitional. There's no intent change here. It's just because there were some issues raised to make sure that was the case, the understanding. So it's a wording issue.

1730

**Mr. Hardeman:** I guess, though, if I read that, that's how we got there, but when we get to, "(3) If the deemed bylaw is a delegation bylaw, it is also deemed to provide that both the municipality and the delegate can exercise the delegated powers," is there a time when that stops, that they can't both exercise the same delegated power?

**Mr. Duguid:** Let me try to—I'll say it this way. What it does is it clarifies the transitional role which ensures that if a person or a body has certain powers under the existing Municipal Act, that person or body would continue to have those powers following the enactment of Bill 130. This is done by deeming a municipality to pass all necessary bylaws to grant the powers to that person or body. Then the municipality is free to repeal or amend these deemed bylaws at any time. It's a transitional thing, to get them from enactment of Bill 130 to when they get their own policies in place, because they'll need time. The next day, they won't have policies in place to deal with their issues. It's a catch-all to make sure that nothing is left without authority to continue to do the good work the municipality does. I use inspections as an example; there are probably others too.

**The Chair:** Any further speakers? All those in favour of the government motion on page 50? Those opposed? That motion is carried.

Shall section 187, as amended, carry? Those opposed? That motion is carried.

Shall section 188 carry? All in favour? Those opposed?

**Mr. Duguid:** Mr. Chair, do we have a motion on 188?

**Mr. Prue:** It's 188.1.

**Mr. Duguid:** I'm sorry.

**The Chair:** Section 188 carries.

Section 188.1, page 51.

**Mr. Brownell:** I move that schedule A to the bill be amended by adding the following section:

"188.1 Section 468 of the act is repealed and the following substituted:

"Board of control, city of London

"468. Despite the repeal of the old act, part V of that act continues to apply to the board of control of the Corporation of the City of London, subject to the following rules:

"1. The board is deemed to be a board of control under section 64 of the old act.

"2. Subsection 64(3) of the old act does not apply to the board.

"3. The references to a two-thirds vote in subsections 64(2) and 68(3), (6) and (7) of the old act are deemed to be references to a majority vote."

**The Chair:** Thank you, Mr. Brownell. Mr. Duguid?



**Mr. Duguid:** I can see by the looks that there's a need for an explanation. Do we need unanimous consent? Did they want the explanation first so they know what this is about?

**The Chair:** Yes. Just so everybody understands, this section is not open. We would need unanimous consent to deal with that motion.

**Mr. Duguid:** This is a request by the city of London. You may know they're the only board of control left in the province, and they asked that they have the ability to dissolve their board of control by a simple majority rather than a two-thirds majority and to dissolve the board of control without the Ontario Municipal Board approving it. We felt that's in keeping with the requests and the way we wanted to go with this. We thought it was a reasonable request and granted it through this, but it does need unanimous consent in order to carry.

**The Chair:** Do we have unanimous consent to deal with the issue?

**Mr. Prue:** To deal with it, yes.

**The Chair:** We do? It's on the floor, then.

**Mr. Hardeman:** I know it's in the wording, and maybe the parliamentary assistant can answer and maybe we need the legal branch, but "deemed to be references to a majority": Does that mean that we expect two thirds to be the majority, or does that mean that it goes back to half plus one?

**Mr. Duguid:** This has the effect of giving them the ability through a simple majority vote to dissolve its board of control, restructure itself.

**Mr. Hardeman:** I just want to make sure from a legal point of view, when you say that two thirds is deemed a majority, does that mean two thirds is the majority? I know what the intent is and I agree with the intent, but when you say wherever it reads two thirds we deem that to be the majority, does that mean that no longer means one half plus one, that it now means two thirds?

**Mr. Duguid:** My understanding of this is that it changes the two thirds to a majority, majority plus one, I guess, a simple majority.

**Mr. Hardeman:** Just shake your head if you agree.

*Interjection.*

**Mr. Hardeman:** Okay.

**The Chair:** Any speakers?

**Mr. Prue:** I just have a question. Whose majority is this? Is this the London council's majority, or is this the board of control's? As far as I know, the board of control in London—and I could be wrong—is made up of four members plus the mayor, so there are five. Does that mean that three of them have to vote to dissolve that? Is that what this is about, or is this the London council in its totality that needs a majority in order to change it?

**Mr. Duguid:** My understanding is it's the city of London, but maybe staff can clarify that to see whether it's the city of London or both. I think it's just the city of London.

**Mr. Gray:** Yes, it's a vote of city council. So right now the law says you need a two-thirds vote for the bylaw and then approval by the municipal board. Now

the law would be a majority vote by city council without municipal board approval. That's the change.

**Mr. Prue:** It's not the board of control voting, then.

**Mr. Gray:** No.

**Mr. Prue:** Okay.

**Mr. Hardeman:** One more question to the parliamentary assistant: It was in the city of London presentation that they wanted to go to the simple majority?

**Mr. Duguid:** Yes.

**The Chair:** Okay, thank you. Those in favour of the government motion on page 51? Those opposed? That motion is carried.

Shall section 188.1 carry? Those in favour? Those opposed? That is carried.

Section 189: We have no amendments before us. Shall section 189 carry? Those opposed? That motion is carried.

Section 190: Page 52 of your agenda, an NDP motion.

**Mr. Prue:** I move that subsection 190(2) of schedule A to the bill be struck out and the following substituted:

"Same

"(2) Sections 1 to 110 and 112 to 189 come into force on a day to be named by proclamation of the Lieutenant Governor.

"Same

"(3) Section 111 comes into force on December 31, 2007."

The purpose of this is that the municipalities asked for a year in order to implement section 111 dealing with policies aimed at employee hiring, procurement of goods and services, all those things. The municipalities and AMO came before the committee to say they needed a year in order to implement the policies required under section 111. This provides one calendar year for that to take place. Given that I understand this matter, if we finish today, will go back to the House to be wrapped up before we break for Christmas, that would give them at least one year or one year and a couple of weeks to do that. It's a very reasonable request, I thought, that the municipalities and AMO made, and I move the motion to allow them to do it.

**The Chair:** Thank you, Mr. Prue. Further speakers?

**Mr. Duguid:** I appreciate the motion, but the government does have the power to proclaim the sections at different times. We're in discussions right now to determine what sections should be proclaimed when, because Mr. Prue is quite right; the municipalities have asked for more time on a few areas and in particular the areas where they have to develop policies. So we can certainly assure the committee that we're in discussions now and intend to accommodate a number of the concerns raised, but we're not at a point where we can specifically decide which would be proclaimed and when. So we can't support this at this time.

**The Chair:** Further speakers?

**Mr. Prue:** It's part of the record, though: You are going to give them additional time.

**Mr. Duguid:** The answer to that would be yes. We've heard from the municipalities and we're in discussions



right now in terms of the proclamation dates. No decisions have been made, so I can't say hard and fast, but I can say that we've listened very carefully and understand their concerns and I expect that there will be some provisions made in terms of the proclamation dates to accommodate a number of concerns raised.

**The Chair:** Are there any further speakers? Those in favour of the NDP motion on page 52? Those opposed? That motion is lost.

Shall section 190 carry? Those in favour? Those opposed? Section 190 is carried.

Shall schedule A, as amended, carry? Those in favour? Those opposed? Schedule A is carried.

Moving on to schedule B, shall section 1 of schedule B carry? Those in favour? Those opposed? That is carried.

1740

Section 2: There is a PC motion on page 53.

**Mr. Hardeman:** I move that section 2 of schedule B to the bill be amended by adding the following subsection:

"(2) Section 6 of the act is amended by adding the following subsection:

"Taxing powers

"(3) Despite any other provision of this act or any other act, the city does not have any power to impose a tax that it did not have before June 12, 2006."

This amendment seeks to remove the taxing powers that were downloaded to the city of Toronto in the City of Toronto Act. The government has proven itself unwilling to address the issue of fiscal challenges of municipalities quickly. In fact, they have ignored our motion to complete the review of the municipal-provincial fiscal imbalance, shall we say, taking it from 18 months to a more expedient time to report to the Legislature and to the municipalities before the next provincial election, even though a great number of municipalities have supported that resolution.

The other day the minister made some comments in the Legislature concerning another matter. He said that he had heard from 110 municipalities, or a hundred and some municipalities, on the issue that he was referring to, so that made it appropriate. Obviously this is not only what AMO wanted but what the municipalities wanted. We now have in the neighbourhood of somewhere between 130 and 140 municipalities across Ontario that have supported the issue; it should not take 18 months to complete that review.

I think the government's actions between the passing of the City of Toronto Act and now have made it quite clear. In August they announced this review, and just these last couple of weeks they actually appointed the first panels to start the review. If it was being done in a way to achieve the best results in the most efficient and effective way, they would have had that panel appointed at the end of August or the first part of September instead of now. Obviously, they do not want to solve the problem.

When Mayor Miller made a presentation during the City of Toronto Act, he said he had absolutely no plans to use these powers, but of course they are a great concern to a lot of people in the city of Toronto, as to what may happen to them as they reach the point where the city has to deal with that \$519 million, I think it is. It's mentioned in today's paper how they're going to have a shortfall in doing their budget.

Some strange comments are coming out from the city as different people are talking about the city's needs and the province not dealing quickly with that fiscal imbalance, such as the individual who's appointed to the licensing committee. He suggested that maybe the answer was putting a tax on individual apartments in the city of Toronto, so people would pay a larger fee to live in a rented accommodation than to live in a condo or a single-family dwelling. Of course, he didn't suggest it was going to be that way. He said they would put a fee on the landlord based on each apartment, and the lower the level of rent or the lower the quality of the apartment, the higher the fee would be. This would supposedly make the landlord upgrade the apartment building. In most cases, I think what we would see is the pass-through of that fee to the individual tenant, and it would make it even slower in getting the apartment building upgraded. The reason I bring that up is that I think the problem here is that they have the ability to do that.

The deputy city manager, Joe Pennachetti, says that he believes there will be power to put a tax on car licences in the city, that they could add a \$5, \$10, \$25 surcharge on every licence plate issued in the city of Toronto to help pay for city services. Again, we've heard from the people saying they don't want—not just the public in Toronto, but the mayor of the city says they don't want to use those taxes. I think it's important that we look at that and say we treat all people in Ontario fairly, and if the tax is not allowed on the Mississauga side, which this act says it won't be, then across the street the people there will have to pay more tax or the individual establishments will have to absorb that extra cost that would be put on it. So I think it's very appropriate at this time, having looked at what's been happening and so forth, that we just take that out of the City of Toronto Act.

I think it's along with a number—and if we look through this from here on, they seem to be primarily City of Toronto Act amendments, an act that has not yet been implemented that is going to get this many amendments through this act. It would seem to me that if all those other areas we've looked at to see whether what was being proposed in the original act is working properly and the government has decided there are that many that need changing, I would suggest that this is one. When you look at the impact and some of the options that could be coming forward, I think this would be a good time to eliminate that too and get us back into the frame of all municipalities being treated fairly, as accountable governments in their own right. The parliamentary assistant has said that a number of times, and I think this is a good way to show that we have confidence in all municipi-



palities, including the city of Toronto, and that we should give everyone the same: Either everyone should be allowed to tax or no one should be asked to look into that.

Having said that, it may sound like I don't think Toronto should have that authority. I'm personally convinced that when the budgeting process is well under way and the city of Toronto says to the province, "We can't make ends meet with our present ability to pay, with our present tax structure," the province is going to say, "But you have the ability to levy more taxes, so get on with it." I think we should take that out so that's not the approach that the province can use as we deal with the shortcoming in the revenues for the city of Toronto budget that they're going to be facing in a matter of a few months. That's why I'm putting this forward and I hope that the government supports it, though I'm not totally confident that they will.

**The Chair:** Are there any further speakers to the motion on page 53?

**Mr. Duguid:** Just briefly, the Tory approach to Toronto just doesn't change whether they're in government or opposition. They don't respect the city of Toronto, they don't respect the people of Toronto and their judgement. They didn't respect us when they forced an amalgamation on the people of Toronto, and we all know the results of that. They didn't respect us or any other municipality because they were the lord of downloading, which brought Toronto right to its knees. Our government is doing our best to try to upload as much as we can and we continue to work at that. We're working with the city of Toronto. We feel they're a mature level of government. We feel the people of Toronto are a mature people who will judge their elected representatives accordingly. As such, we feel the new tax powers that we're giving the city of Toronto are totally appropriate and will be used in a measured way to the betterment of their community. We have confidence in the people of Toronto, and that's what distinguishes us, I think, from the Tories.

**The Chair:** Further speakers?

**Mr. Prue:** I can see where the Conservatives are coming from, because I know full well that the answer that's going to come is, "You have the power to tax," when the city cries they don't have enough money. I know that's exactly what you're going to say, and I know exactly why he's trying to stop you from doing that.

But turning it around, I too have confidence. I know some people worry sometimes about Howard Moscoe's musings, and perhaps that is what has brought this on. But he is but one member of council. He is very inventive. He probably has 100 ideas a week and at least one of them is good.

*Interjection.*

**Mr. Prue:** No, but that's important. I'm not saying that in a derogatory way, because there are people who haven't had one idea in their entire life on that council as well. And that is very derogatory.

**Mr. Duguid:** We won't name names.

**Mr. Prue:** No, I'm not going to name any names, but we know who some of those people are.

But there are 45 members and they will balance out what Mr. Moscoe thinks about. I am totally confident in the end that if we give them the authority and if they misuse it—I'm sure that's why the minister has that section in; even though I didn't vote for it, that's what it's there for. That's what's going to be exercised if and when they go too far, which I don't think they will.

1750

**The Chair:** All those in favour of the PC motion on page 53? All those opposed? That motion is lost.

For sections 3 to 6, we have no amendments before us.

*Interjection.*

**The Chair:** I'm sorry. Shall section 2 carry? Those in favour? Those opposed? That is carried.

No amendments before us on sections 3 to 6. We'll collapse them. Those in favour? Those opposed? They're carried.

Page 54 actually now becomes page 85d. That deals with schedule D.

Moving on to section 7, it's a government motion on page 55.

**Mr. Kular:** I move that section 7 of schedule B to the bill be struck out and the following substituted:

"7. Section 24 of the act is repealed and the following substituted:

"Delegation re hearings

"Application

"24. (1) This section applies when the city is required by law to hold a hearing or provide an opportunity to be heard before making a decision or taking a step, whether the requirement arises from an act or from any other source of law.

"Delegation authorized

"(2) Despite subsections 21(1) and (2), sections 7 and 8 authorize the city to delegate to a person or body described in subsection 21(1) the power or duty to hold a hearing or provide an opportunity to be heard before the decision is made or the step is taken.

"Rules re effect of delegation

"(3) If the city delegates a power or duty as described in subsection (2) but does not delegate the power to make the decision or take the step, the following rules apply:

"1. If the person or body holds the hearing or provides the opportunity to be heard, the city is not required to do so.

"2. If the decision or step constitutes the exercise of a statutory power of decision to which the Statutory Powers Procedure Act applies, that act, except sections 17, 17.1, 18 and 19, applies to the person or body and to the hearing conducted by the person or body."

**The Chair:** Mr. Duguid?

**Mr. Duguid:** I'll give the shortest explanation I can, and if they need more, that's fine. A lot of these motions, this one included, are consequential to motions that were made to the Municipal Act, just to make sure there's consistency between the approach taken in the Municipal Act and the City of Toronto Act. This is one of those.



**The Chair:** Any further speakers? Seeing none, all those in favour of the motion on the floor? Those opposed? The motion on page 55 is carried.

Shall section 7, as amended, carry? Those in favour? Those opposed? That motion is carried.

Sections 8 to 16 have no amendments contain therein. We'll collapse them. All those in favour? Those opposed? They're carried.

Moving on to section 17. There are no amendments before us?

*Interjection.*

**The Chair:** Okay, that was dealt with the first day of our hearings.

Sections 18 to 23: no amendments before us. We'll collapse them. All those in favour? Those opposed? That's carried.

Going on to section 24, there's a government motion on page 58.

**Mr. Racco:** I move that section 24 of schedule B to the bill be struck out and the following substituted:

"24. Section 112 of the act is repealed."

**The Chair:** Mr. Duguid.

**Mr. Duguid:** A separate motion under schedule C, motion 81, would remove ministerial approval of providing financial incentives under community improvement plans for all municipalities. As a result, this specific section in the City of Toronto Act, which gives Toronto the authority to approve financial incentives under community improvement plans, would no longer be required. So this section has been replaced by changes that will be made in the Planning Act, just in the neatness of trying to have different portions of the bill in the right areas.

**The Chair:** Are there any further speakers to that? Seeing none, all those in favour? All those opposed? That motion is carried.

Shall section 24, as amended, carry? Those in favour? Those opposed? That's carried.

For sections 25 and 26 there are no amendments; let's collapse the two. Those in favour? Those opposed? They're carried as well.

Section 26.1: There's a government motion on page 59. Mr. Brownell.

**Mr. Brownell:** I move that schedule B to the bill be amended by adding the following section:

"26.1 The act is amended by adding the following section:

"Development permit system

"114.1 A regulation made under section 70.2 of the Planning Act may,

"(a) vary, supplement or override section 113 or 114 of this act or any bylaw passed under either of those sections as necessary to establish a development permit system;

"(b) authorize or require the city to pass a bylaw to vary, supplement or override a bylaw passed under section 113 or 114 as necessary to establish a development permit system;

"(c) if the city has adopted or established a development permit system,

"(i) exempt it from any provision of section 113 or 114 set out in the regulation,

"(ii) prohibit it from passing a bylaw under those provisions of section 113 or 114 that are specified in the regulation."

**Mr. Duguid:** This is a technical amendment. I can explain further if need be.

**The Chair:** Any further speakers? All those in favour? Those opposed? That motion is carried.

Shall section 26.1, as amended, carry? Those in favour? Those opposed? That is carried.

Section 27: There's a government motion on page 60. Mr. Racco.

**Mr. Racco:** I move that section 27 of schedule B to the bill be amended by adding the following subsection:

"(3) Subsection 115(22) of the act is repealed and the following substituted:

"Transition

"(22) This section does not apply with respect to an appeal that is made before the day a bylaw passed under subsection (5) comes into force."

**Mr. Duguid:** This is a transitional provision fairly similar to something we debated earlier on.

**The Chair:** Any further speakers on the motion on page 60?

**Mr. Prue:** I need a bit more than that. What does not apply to an appeal that is made before the bylaw is passed? I'm trying to leaf through as fast as I can, but I can't quite put my finger on it. I'm running through three sets of acts here.

**Mr. Duguid:** I totally understand; I'm running through the same thing. This ensures that appeals and process can continue under the current system for consents in minor variances until a new system is put in place by the city of Toronto.

**The Chair:** Any further speakers? Mr. Prue?

**Mr. Prue:** No.

**The Chair:** All those in favour? Those opposed? That motion is carried.

Shall section 27, as amended, carry? Those in favour? Those opposed? That is carried.

Sections 28 and 29 have no amendments. Those in favour? Those opposed? They are carried.

Moving on to section 29.1 on page 61, there's a government motion. Mr. Brownell.

**Mr. Brownell:** I move that schedule B to the bill be amended by adding the following section:

"29.1 The act is amended by adding the following section:

"Same

"122.1 The Minister of Municipal Affairs and Housing may make regulations prescribing limitations for the purposes of subsection 113(2.1)."

**Mr. Duguid:** This is a technical amendment to ensure that the regulation-making authority, including the ability to include limitations on conditions which were clarified



in the Planning Act, also apply to the City of Toronto Act.

**The Chair:** Any further speakers to the motion on page 61?

**Mr. Hardeman:** I guess my concern about this amendment is just a clarification. Again, the regulatory powers seem to be able to override powers that were given to the city. To me, it just flies in the face of saying that we trust them, that they will do it right. Does this amendment create more regulatory powers than the present bill contains?

**Mr. Duguid:** This has to do with the zoning-with-conditions provision, that we're allowing municipalities to zone with conditions, and it's ensuring that Toronto has the same regime as others across the province. But in terms of specifics, we'd have to get some staff to answer this precisely.

**Mr. Hardeman:** So this is just bringing the city of Toronto in line with all the rest of the province—

**Mr. Duguid:** Exactly.

**Mr. Hardeman:** —as it relates to the planning process.

**Mr. Duguid:** Yes, and zoning with conditions.

**The Chair:** Any further speakers to the motion on page 61?

Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 29.1 carry? Those in favour? Those opposed? That is carried.

Sections 30 to 35?

**Mr. Prue:** On a point of order, Mr. Chair: We were to have completed the stuff by 6 o'clock. I understand that we can continue and that, in fact, we may want to continue. May I ask you until what time?

**Mr. Duguid:** Mr. Chair, if I can assist just a little bit in that, most of these motions have to do with what we've done previously, and they relate to other changes we've made in the Municipal Act. I don't think there are too many contentious motions left, so I think we can get through this within 20 minutes, maybe, if we go real quick.

**Mr. Prue:** Well, if that's the plan, then I certainly am not going to step in the way.

**Mr. Duguid:** I hope, I hope. If we motor through, I think we've got a shot at doing that.

**The Chair:** Thank you, Mr. Prue.

**Mr. Hardeman:** Could I just have about five minutes to meet the call of nature?

**The Chair:** Okay. We'll take a very short recess.

**Mr. Prue:** I could use a recess to see my staff before they go home, too.

**The Chair:** Let's make it five minutes, then.

*The committee recessed from 1801 to 1808.*

**The Chair:** We can call back to order again.

We're going to deal now with sections 30 to 35, to which there are no amendments. We've got agreement to collapse them. All those in favour? Those opposed? Sections 30 to 35 are carried.

Section 35.1: There's a government amendment on page 62.

**Mr. Duguid:** I move that schedule B to the bill be amended by adding the following section:

"35.1 The act is amended by adding the following section:

"Additional regulation-making powers re corporations

"154.1(1) For the purposes of section 148, the Lieutenant Governor in Council may make regulations governing the powers of the city referred to in that section and governing the corporations established under that section, including regulations providing that specified corporations are deemed to be local boards for the purposes of any provision of this act or for the purposes of the definition of 'municipality' in such other acts as may be specified.

"Saving

"(2) The power conferred by subsection (1) is in addition to the power conferred by section 154."

This is the same as in the Municipal Act, the same motion that we passed previously, which was motion 19 at that time, to do with the authority of business corporations.

**The Chair:** Any questions? All those in favour? Those opposed? That motion is carried.

Shall section 35.1 carry? Those in favour? Those opposed? That's carried.

Sections 36, 37 and 38 have no amendments, if we can collapse those. All those in favour? Those opposed? They are carried.

Moving on now to section 39 on page 63, it's a government motion.

**Mr. Duguid:** I move that subsection 190(3.1) of the City of Toronto Act, 2006, as set out in subsection 39(1) of schedule B to the bill, be struck out and the following substituted:

"Educational or training sessions

"(3.1) A meeting of the city council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:

"1. The meeting is held for the purpose of educating or training the members.

"2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee."

It just makes the City of Toronto Act consistent with the same provisions for the Municipal Act.

**Mr. Prue:** Can I speak to this? No, it doesn't, because this is the bill that has been voted the other way. If this is passed, the city of Toronto will be different from everything else. Might I suggest the government may want to withdraw this so that the city of Toronto is consistent with every other municipality in the province when it comes to closed meetings.

**The Chair:** Mr. Duguid?

**Mr. Duguid:** I'm sorry. My explanation may be wrong on this particular one.



**Mr. Prue:** If we could go back, this is the motion that caused some confusion. I believe it was number 30.

**Mr. Duguid:** You see, I had number 32 as the motion that this corresponds to. If I could have some help from maybe our staff? Does this correspond to number 32?

**Mr. Gray:** I think that the motion there was some confusion over was the electronic meetings motion, and not the equivalent to this motion. I think the equivalent motion to this did go through.

**Mr. Prue:** Perhaps, then, it's my error.

**The Chair:** Any further speakers to the government motion on page 63?

**Mr. Prue:** I did not support the last one, and I will not be supporting this one either.

**The Chair:** All those in favour? Those opposed? That motion is carried.

A government motion now on page 64.

**Mr. Duguid:** I move that subsections 190(8) and (9) of the City of Toronto Act, 2006, as set out in subsection 39(3) of schedule B to the bill, be struck out and the following substituted:

"Record of meeting

"(8) The city, a local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not.

"Same

"(9) The record required by subsection (8) shall be made by,

"(a) the clerk, in the case of a meeting of the council; or

"(b) the appropriate officer, in the case of a meeting of a local board or committee."

This is in line with motion number 37 that we passed in the Municipal Act.

**The Chair:** Any further speakers? Seeing none, all those in favour of the government motion on page 64? Those opposed? That motion is carried.

Shall section 39, as amended, carry? Those in favour? Those opposed? That is carried.

Moving on to section 40, there's a government motion on page 65.

**Mr. Duguid:** I move that subsection 190.2(1) of the City of Toronto Act, 2006, as set out in section 40 of schedule B to the bill, be amended by striking out "investigate" and substituting "investigate in an independent manner."

This is similar to the provision in the Municipal Act for motion number 40.

**The Chair:** Any further speakers? Seeing none, all those in favour? Those opposed? That motion is carried.

Government motion on page 66.

**Mr. Duguid:** I move that subsection 190.2(2) of the City of Toronto Act, 2006, as set out in section 40 of schedule B to the bill, be struck out and the following substituted:

"Powers and duties

"(2) Subject to this section, in carrying out his or her functions under subsection (1), the investigator may

exercise such powers and shall perform such duties as may be assigned to him or her by the city.

"Matters to which the city is to have regard

"(2.1) In appointing an investigator and in assigning powers and duties to him or her, the city shall have regard to, among other matters, the importance of the matters listed in subsection (2.3).

"Same, investigator

"(2.2) In carrying out his or her functions under subsection (1), the investigator shall have regard to, among other matters, the importance of the matters listed in subsection (2.3).

"Same

"(2.3) The matters referred to in subsections (2.1) and (2.2) are,

"(a) the investigator's independence and impartiality;

"(b) confidentiality with respect to the investigator's activities; and

"(c) the credibility of the investigator's investigative process."

This is similar to what we did under the Municipal Act under motion number 41.

**The Chair:** Any further speakers? Seeing none, all those in favour of the motion on page 66? Those opposed? That motion is carried.

Shall section 40, as amended, carry? Those in favour? Those opposed? Section 40 is carried.

Shall section 41 carry? Those in favour? Those opposed? That carries.

Going to section 42, we have a new motion being distributed.

**Mr. Duguid:** Would you like me to read it while it's being distributed, Mr. Chair?

**The Chair:** Just make sure the opposition parties have it first.

**Mr. Duguid:** They have it.

I move that clause 229(4)(b) of the City of Toronto Act, 2006, as set out in section 42 of schedule B to the bill, be amended by striking out "clause 228(3)(a)" and substituting "clause 228(4)(a)."

This corrects a cross-reference in the new section 229, which authorizes multi-year budgeting. A numerical error was the problem, so it's substituting "(3)(a)" with "(4)(a)."

**The Chair:** We need unanimous consent—  
*Interjection.*

**The Chair:** No, we don't. We just deal with it as it is. Any further speakers? Seeing none, all those in favour? Those opposed? That is carried.

Shall section 42, as amended, carry? Those in favour? Those opposed? That is carried.

Section 43: Those in favour? Those opposed? That is carried.

Moving on to section 44, which I think it a government motion on page 67.

**Mr. Duguid:** I move that section 248.1 of the City of Toronto Act, 2006, as set out in section 44 of schedule B to the bill, be amended by adding the following subsections:



“Repeal, surplus from other borrowing

“(3) Despite subsection (1), the city may repeal a debenture bylaw or other bylaw for long-term borrowing to reduce or eliminate the amount that would have been required to be raised annually to repay the debentures or other long-term borrowing, to the extent that an amount applied in accordance with subsection 248(2) reduces or eliminates the requirements for repayment of principal and interest for the borrowing.

“Repeal, sinking or retirement fund in surplus

“(4) Despite subsection (1), the city may repeal a debenture bylaw or other bylaw for long-term borrowing with respect to amounts that would have been required to be raised for a sinking or retirement fund, to the extent that the balance of the fund as audited by the city auditor, including any estimated review, is or will be sufficient to entirely repay the principal of the debt for which the fund was established on the date or dates the principal becomes due.”

This is a technical amendment for consistency again with the Municipal Act. It has to do with sinking funds, and I certainly can provide a greater explanation than that, if necessary.

**Mr. Prue:** If you check the transcript, the parliamentary assistant used the word “review” instead of “revenue.” I don’t want us to be passing the wrong thing. The third line from the bottom, he said “including any estimated review” as opposed to “revenue.” I’m not going to vote against it; it’s just for the record. I want it to be—

**Mr. Duguid:** For the record, I’ll correct that. Do you want me to reread that section?

**The Chair:** Start at “including” perhaps.

**Mr. Duguid:** “Audited by the city auditor, including any estimated revenue, is or will be sufficient to entirely repay the principal of the debt for which the fund was established on the date or dates the principal becomes due.” Did I read it right that time?

**Mr. Prue:** Absolutely.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** I guess it’s just a correction in the act. Again, I’m just a little curious, when we get on the principle of local autonomy, as to why we would still be so descriptive in how they borrow and pay off their debts.

**Mr. Duguid:** Actually, what this does is—in the Municipal Act, we’re allowing others to use their surpluses and their sinking funds elsewhere. That wasn’t included in the City of Toronto Act and should have been. It was apparently unintentionally omitted from the City of Toronto Act, so it’s making a correction to that.

1820

**The Chair:** Are there any further speakers? Those in favour of the motion on page 67? Those opposed? That motion is carried.

Shall section 44, as amended, carry? Those in favour? Those opposed? That’s carried.

Section 44.1, a government motion on page 68.

**Mr. Duguid:** I move that schedule B to the bill be amended by adding the following section:

“44.1 Section 249 of the act is repealed and the following substituted:

“Use of sinking and retirement funds

“249(1) No amount raised for a sinking or retirement fund of the city, including earnings or proceeds derived from the investment of those funds, shall be applied toward paying any part of the current or other expenditure of the city.

“Exception, surplus

“(2) Despite subsection (1), if the balance of a sinking or retirement fund, including any estimated revenue, as audited by the city auditor is or will be sufficient to entirely repay the principal of the debt for which the fund was established on the date or dates the principal becomes due, the city may apply any surplus in the fund to one or both of the following purposes:

“1. Repayment of the principal and interest of any other sinking or retirement fund.

“2. Payment for any capital expenditure of the city.

“Same

“(3) Any surplus that remains in the fund after the city makes payments in accordance with subsection (2) may be transferred to the general fund of the city.”

This amendment—

**The Chair:** Just prior to moving on, we need unanimous consent to deal with this. Do we have unanimous consent? We do.

**Mr. Duguid:** This was a request made by the city of Toronto for greater consistency with the existing Municipal Act.

**The Chair:** Any further speakers? All those in favour? Those opposed? That motion is carried.

Shall section 44.1 carry? All those in favour? Those opposed? That is carried.

Sections 45 to 56, we have no amendments before us. We’ll collapse those and deal with them all at once. All those in favour? Those opposed? That is carried.

Moving on to section 56.1, a government motion on page 69.

**Mr. Duguid:** I move that schedule B to the bill be amended by adding the following section:

“56.1 Clause 306(2)(a) of the act is repealed and the following substituted:

“(a) shall refund any overpayment to the owner of the land as shown on the tax roll on the date the adjustment is made; or.”

That’s another consistency change.

**The Chair:** Questions?

**Mr. Hardeman:** I wonder, as we’re going through so many of these consistencies, why we have two acts if everything has to be identical through the whole bill.

**Mr. Duguid:** I could answer that, but I think we’ll just keep going.

**The Chair:** All those in favour of the government motion on 69? All those opposed? That is carried.

Shall section 56.1 carry? Those in favour? That is also carried.

Section 57, a government motion on page 70.

**Mr. Duguid:** I will withdraw that, Mr. Chair.



**The Chair:** That's going to be withdrawn.

Government motion on page 71.

**Mr. Duguid:** I withdraw that, as well, because it's connected to the original one.

**The Chair:** Thank you. Government motion on page 72.

**Mr. Duguid:** We won't withdraw that.

I move that subsection 318(6) of the City of Toronto Act, 2006, as set out in subsection 57(2) of schedule B to the bill, be amended by striking out "10 years" and substituting "seven years."

This is the same as what we did with the Municipal Act.

**The Chair:** Any speakers? Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 57, as amended, carry? Those in favour? Those opposed? That is carried.

Section 58, there are no amendments before us. All those in favour? Those opposed? That is carried.

Moving on to section 59, a government motion on page 73a and b. There's a revised motion on this, is there?

**Mr. Duguid:** I believe I have the motion here.

I move that section 59 of schedule B to the bill be struck out and the following substituted:

"59. Subsection 329(12) of the act is repealed and the following substituted:

"Definition

"(12) In this section,

"'tax' includes,

"(a) charges that are imposed under section 208 of the Municipal Act, 2001 by virtue of the operation of subsection 429(2) of this act, and

"(b) fees and charges, other than charges described in clause (a), that are imposed under this act and satisfy the conditions set out in paragraphs 1, 2 and 3 of subsection (13).

"Same

"(13) The conditions referred to in clause (b) of the definition of 'tax' in subsection (12) are:

"1. The fees and charges are imposed to raise an amount for at least one of the following purposes:

"i. Promotion of an area as a business or shopping area.

"ii. Improvement, beautification and maintenance of city-owned land, buildings and structures in the area beyond that provided at the city's expense generally.

"iii. Interest payable by the city on money it borrows for the purposes of subparagraph i or ii.

"2. The fees and charges are imposed on owners of land that is included in the commercial or industrial classes within the meaning of subsection 275(1).

"3. The fees and charges have priority lien status and are added to the tax roll."

This is similar to motion 46 that we approved on the Municipal Act.

**The Chair:** Thank you, Mr. Duguid. Mr. Prue?

**Mr. Prue:** Just a question. I notice here that the original section 59 was to change two of the words in

French: "The French version of the definition of 'tax' ... is amended by striking out 'notamment' in the portion before clause (a) and substituting 'en outre'." Here we have a whole new section. I would trust that in this whole new section, the French is correct?

**Mr. Duguid:** One would expect, yes; oui.

**Mr. Prue:** But the original intent of the bill was just to change one word in French, and now we have a whole new section. What has been changed, since I do not have that whole thing in front of me?

**Mr. Duguid:** It was the same in the previous section as well. There was concern that there are three conditions set out in the act. This ensures that the fees and charges included in the definition of "tax" will satisfy those three conditions. It was to clarify that that would take place.

I'd love to give you a more detailed explanation or examples; I really can't. We could get some staff to do it, but it is the same as we did in motion 46.

**The Chair:** Do you need somebody from staff to come forward, Mr. Prue?

**Mr. Prue:** Yes, might as well, if it only takes a minute. If you can just explain, because this is a whole new section.

**Mr. Gray:** Yes, the section is open in the bill, but only to change one word in the French. We took the position that the section is open, so the motion is in order.

**Mr. Prue:** I'm not saying it's not; just tell me what changes have been made in the English version, because I don't have the old English version in front of me.

**Mr. Gray:** As the parliamentary assistant pointed out, the concern with the bill as drafted was that in order for fees and charges to fall within the definition of tax, it wasn't clear that they had to meet all three conditions that are set out now in subsection (13). So the purpose of this amendment is to clarify that you only fall within the definition if you meet each one of the three conditions, not just any one of the three.

**Mr. Prue:** The old one had any one of the three and this one has all three.

**Mr. Gray:** The old one had language that was ambiguous enough that a number of people read it as any one of the three. We didn't actually use "any one of the three." We used words we thought meant all three of the conditions, but people didn't read it that way.

**Mr. Prue:** Now they will.

**Mr. Gray:** Yes.

**The Chair:** Sounds good.

**Mr. Duguid:** The world is saved.

**Mr. Hardeman:** One further question before you leave. Does this in any way increase or decrease the ability for taxes, user fees and licensing fees for the city of Toronto in the act presently?

**Mr. Gray:** No. There's nothing new in this. What this does, if you fall within the definition of "tax"—I mean, there are two main purposes that are achieved. If your building isn't occupied for some portion of the year, these fees and charges will be included in the definition of "tax" so your vacant unit rebate will be somewhat larger, or if you're entitled to a charitable rebate as a



charity that's subject to taxes either directly or through your rent, your charitable rebate will be based not just on the tax, but the tax plus the fees and charges. So your charitable rebate will be a little bit larger, but it's not a new power to impose fees and charges.

**Mr. Hardeman:** Okay. Thank you.

**The Chair:** All those in favour of the motion on 73a and b? Those opposed? That motion is carried.

1830

Shall section 59, as amended carried? Those in favour? Those opposed? That is carried.

There are no amendments before us on sections 60 and 61. We'll deal with them together. All those in favour? Those opposed? That is carried.

Section 62: There is a government motion on page 74.

**Mr. Duguid:** I move that clause 350(7.1)(c) of the City of Toronto Act, 2006, as set out in subsection 62(3) of schedule B to the bill, be struck out and the following substituted:

"(c) any interest or title acquired by adverse possession by abutting landowners, including the crown in right of Ontario, before registration of the notice of vesting."

This amendment is for consistency with motion 47 in the Municipal Act.

**The Chair:** Any speakers, any questions? Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 62, as amended, carry? Those in favour? Those opposed? That is carried.

No amendments on sections 63 to 77. We'll collapse those and deal with them all at once. All those in favour? Those opposed? They are carried.

Moving on to section 78, there is a government motion on pages 75a and b.

**Mr. Duguid:** I move that section 78 of schedule B to the bill be amended by adding the following as section 420.2 of the City of Toronto Act, 2006:

"Deemed bylaw re powers and duties

"420.2(1) This section applies if a person or body, other than a city board, ceases to be authorized to exercise powers or perform duties on behalf of, or in relation to, the city by virtue of the coming into force of any provision of,

"(a) the Stronger City of Toronto for a Stronger Ontario Act, 2006; or

"(b) schedule B to the Municipal Statute Law Amendment Act, 2006.

"Same

"(2) On the day on which the applicable provision comes into force, the city is deemed to have passed any bylaw necessary under this act to give the person or body any power or duty,

"(a) that the city is capable of giving to the person or body under this act; and

"(b) that the person or body was authorized to exercise or perform, on behalf of or in relation to the city, immediately before that day.

"Same

"(3) If the deemed bylaw is a delegation bylaw, it is ... deemed to provide that both the city and the delegate can exercise the delegated powers.

"Amend or repeal

"(4) The city may amend or repeal the deemed bylaw."

This motion corresponds with motion 50 that we passed under the Municipal Act regarding the transition of authority.

**The Chair:** Thank you, Mr. Duguid. Any questions?

**Mr. Hardeman:** I do believe that in the second from the last line on the first page, we missed the word "also."

**The Chair:** I caught that too, but I didn't think it changed—but if you would like to reword that—

**Mr. Hardeman:** "It is also deemed," as opposed to—I think you read, "it is deemed."

**Mr. Duguid:** I'm sorry. Which one is that?

**Mr. Hardeman:** As opposed to it, "it is also deemed."

**Mr. Duguid:** I'll reread it, then:

"Same

"(3) If the deemed bylaw is a delegation bylaw, it is also deemed to provide that both the city and the delegate can exercise the delegated powers."

**The Chair:** Thank you, Mr. Duguid. Any questions on 75a and b? Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 78, as amended, carry? Those in favour? Those opposed? That is carried.

Sections 79 to 88 have no amendments. We'll deal with them at once. All those in favour? All those opposed? That's carried.

Going on to section 88.1, a government motion on page 76.

**Mr. Duguid:** I move that schedule B to the bill be amended by adding the following section:

"88.1 Clause 451(3)(a) of the act is amended by striking out 'subsection 128(4)' and substituting 'section 128.'"

This is a consequential amendment that corrects a reference that is no longer accurate—the Highway Traffic Act issue we talked about previously.

**The Chair:** Thank you. Any speakers? Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 88.1 carry? Those opposed? That is carried.

Section 89: There's a government motion on page 77.

**Mr. Duguid:** I move that clause (b) of the definition of "social housing program" in subsection 453.1(1) of the City of Toronto Act, 2006, as set out in section 89 of schedule B to the bill, be amended by striking out "the City of Toronto Non-Profit Housing Corporation" and substituting "Toronto Housing Company Inc. or Toronto Community Housing Corporation."

Mr. Prue would be familiar with this. This just helps the city with regard to all the different evolution of their corporations, corporate structures of their social housing program. It's a technical amendment dealing with the definition of "social housing program."



**The Chair:** Any questions? Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 89, as amended, carry? Those in favour? That's carried.

Shall section 90 carry? Carried.

Shall section 91 carry? That is carried also.

Table 1, column 3 on pages 78a and 78b.

**Mr. Duguid:** I'm trying to figure out how I'm going to read this, but I'll do my best.

I move that table 1 of schedule B to the bill be amended,

(a) by striking out "12" in column 3 of the item relating to The City of Toronto Act, 1973 and substituting "All/La totalité"; and

(b) by adding the following items:

There are a number of columns here, Mr. Chair. Should I read them column by column going down, or should I read them across?

**Mr. Prue:** Read them across. They won't make any sense the other way.

**Mr. Duguid:** I guess that's the only way to do it.

“

1871-72	77	All/La totalité	An Act to amend the Municipal Institutions Act of Upper Canada, so far as the same relates to the Corporation of the City of Toronto
1884	59	All/La totalité	An Act respecting the City of Toronto
1885	73	All/La totalité	An Act respecting the City of Toronto
1888	47	All/La totalité	An Act respecting the Incorporation of the Village of East Toronto
1892	78	All/La totalité	An Act to confirm By-laws Numbers 76 and 77 of the Town of North Toronto, and for other purposes
1898	54	All/La totalité	An Act respecting the City of Toronto
1900	68	All/La totalité	An Act to incorporate the Town of East Toronto
1908	79	All/La totalité	An Act respecting the Town of East Toronto
1909	114	All/La totalité	An Act respecting the Town of North Toronto
1916	96	All/La totalité	An Act respecting the City of Toronto
1917	77	All/La	An Act to

		totalité	incorporate the Town of Mimico
1932	89	All/La totalité	The Township of Scarborough Act, 1932
1935	99	All/La totalité	The County of York Act, 1935
1937	106	All/La totalité	The County of York Act, 1937
1941	81	All/La totalité	The City of Toronto Act, 1941
1960	170	All/La totalité	The City of Toronto Act, 1960
1989	Pr34	All/La totalité	City of Toronto Act, 1989 (No. 2)
1990	Pr12	All/La totalité	City of Toronto Act, 1990 (No. 2)
1991	Pr11	All/La totalité	City of Toronto Act, 1991 (No. 2)
1993	Pr24	All/La totalité	City of North York Act, 1993

”

This is just the consolidation of a number of acts that were part of the city of Toronto—

**Mr. Prue:** And that's la totalité.

**Mr. Duguid:** La totalité. There were over 230 acts, I think, in all, repealed and consolidated. This is an act—thank God I didn't have to read all 230.

**The Chair:** You're fluently bilingual in one word now, anyway.

**Mr. Duguid:** Totalité. I got better as I went along.

**The Chair:** Mr. Hardeman?

**Mr. Hardeman:** I lost track of it when you got about halfway.

**Mr. Duguid:** It must have been my French that confused you.

**The Chair:** Okay. Are there any serious questions?

**Mr. Hardeman:** I think it's generally—it's on this one, but this is, I believe, the last amendment on the City of Toronto Act. I'm just wondering if I could be assured, or question why, with the changes that we made to make the City of Toronto Act consistent with the Municipal Act, if it's not materially different, the choice was not made by government to make the new Municipal Act consistent with the City of Toronto Act?

**1840**

**Mr. Duguid:** Most of it was a question of drafting. As we went through the Municipal Act, we'd sometimes find improvements to wording and our legal staff would advise that it was better to word it this way. There are other issues as well, but for the most part, it was just better wording required.

**Mr. Hardeman:** But when the city of Toronto wakes up tomorrow or next week when the act goes into force on January 1—when they wake up January 2—none of these amendments we made to the City of Toronto Act are going to materially change the City of Toronto Act.

**Mr. Duguid:** I'm not aware of any amendments. There are a few that include things that may have been omitted unintentionally. In a sense, maybe it will be improved. I'm not aware of anything that would be of concern to the city in regard to these changes.

**Mr. Hardeman:** Thank you.

**The Chair:** Are there any further speakers? Seeing none, those in favour of the government motion on 78a and 78b? Those opposed? They're carried.

Shall table 1, as amended, carry? Those in favour? That's carried.

Shall schedule B, as amended, carry? Those in favour? That also is carried.

Moving on now to schedule C: Sections 1 to 39 have no amendments before us. We'll collapse them and deal with them all at once. Those in favour? Those opposed? They are carried.

Moving on to section 40: There's an NDP motion on page 79.

**Mr. Prue:** I move that subsection 14(2.1) of the Ombudsman Act, as set out in section 40 of schedule C to the bill, be struck out and the following substituted:

"Application

"(2.1) Subsections (2.2) to (2.6) apply if a request is made under section 239.1 of the Municipal Act, 2001 or clause 190.1(1)(b) of the City of Toronto Act, 2006."

**The Chair:** Thank you, Mr. Prue. Are you speaking to the motion?

**Mr. Prue:** I will; I'm not sure whether it would be in order. I understood that this was a consequential amendment of eliminating the ability of municipalities to appoint their own auditors. I remember speaking to this motion and having it defeated. If the clerk will tell me it's in order, I'll explain what it was supposed to do.

**The Chair:** Thank you, Mr. Prue. I'll just get that confirmed.

**Mr. Prue:** I understand from the solicitors that this was the same as section 102 of schedule A.

**The Chair:** Mr. Prue, I've been informed that, unfortunately, it would be deemed out of order.

**Mr. Prue:** That's what I wanted you to say.

**The Chair:** You get marks for honesty.

**Mr. Prue:** Well, of course.

**The Chair:** Okay? So it's out of order.

We move on to page 80, which is a government motion.

**Mr. Duguid:** I move that clause 14(2.4)(b) of the Ombudsman Act, as set out in section 40 of schedule C to the bill, be amended by striking out "18(3)" and substituting "18(3) and (6)."

I'm told this is a technical amendment that clarifies how subsection 18(6) of the Ombudsman Act is applicable to the Ombudsman's meeting investigation function.

**The Chair:** Thank you, Mr. Duguid. Any questions?

**Mr. Hardeman:** I'm sure it has to do with all the numbers in it, but why was the previous one out of order and this one isn't?

**The Chair:** The previous motion was dependent on Mr. Prue's previous motions passing, which they didn't. This motion is not dependent.

Any speakers? Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 40, as amended, carry? All those in favour? That is also carried.

Sections 41 to 46 have no amendments. We'll deal with them all at once. Those in favour? Those opposed? That is carried.

Moving on to section 47, which is on pages 81a and b: a government motion.

**Mr. Duguid:** I move that subsections 47(1) to (4) of schedule C to the bill be struck out and the following substituted:

"47(1) Subsections 28(4), (4.1), (4.2), (4.3), (4.4) and (5) of the Planning Act are repealed and the following substituted:

"Community improvement plan

"(4) When a bylaw has been passed under subsection (2), the council may provide for the preparation of a plan suitable for adoption as a community improvement plan for the community improvement project area and the plan may be adopted and come into effect in accordance with subsections (5) and (5.1).

"Same

"(5) Subsections 17(15), (17), (19) to (19.3), (19.5) to (24), (25) to (30.1), (44) to (47) and (49) to (50.1) apply, with necessary modifications, in respect of a community improvement plan and any amendments to it.

"Same

"(5.1) The minister is deemed to be the approval authority for the purpose of subsection (5).

"Same

"(5.2) Despite subsection (5), if an official plan contains provisions describing the alternative measures mentioned in subsection 17(19.3), subsections 17(15), (17) and (19) to (19.2) do not apply in respect of the community improvement plan and any amendments to it, if the measures are complied with.'

"(2) Subsection 28(7.3) of the act is amended by adding 'or section 333 of the City of Toronto Act, 2006, as the case may be' after 'Municipal Act, 2001.'

"(3) Subsection 28(8) of the act is repealed."

This motion would remove the requirement for the minister to approve the use of financial incentives by municipalities within the context of the community improvement plan. That's really what it does.

**The Chair:** Thank you. Any speakers?

**Mr. Hardeman:** I guess my question would be, is this a new section that's being added under the community improvement plan that presently doesn't exist?

**Mr. Duguid:** Just hang on one second; I'll be right with you on that. Let me just have another look.

Yes. The minister would have had to, in the past, approve the use of financial incentives by municipalities within the context of a community improvement plan, so the minister will no longer need to approve those incentives, although it does say that the municipal approval



authority would be maintained with regard to the public process a municipality would have to undertake, or a community improvement plan. So the minister, through regulation, would have to outline what their public process would have to be in undertaking this change but no longer would be able to say yes or no to it.

**Mr. Hardeman:** Under this amendment, then, the minister would no longer have a say without using regulatory powers to deal with the bonusing in community improvement areas?

**Mr. Duguid:** The bonusing?

**Mr. Hardeman:** Yes, because this is spending money to encourage redevelopment of community improvement areas.

**Mr. Duguid:** Right.

**Mr. Hardeman:** So, in fact, that's the opportunity for municipalities to use the bonusing process to encourage people to invest in that area. This amendment takes away the requirement of the minister to deal with that. Is that right?

**Mr. Duguid:** Well, I don't want to say for sure, because this has to do with community improvement plans, which are similar to bonusing, but I don't want to give you a definitive "yes" to that. I'd better get a staff person to make that statement.

**The Chair:** If you could just identify yourself quickly, that would be great.

**Mr. Irvin Shachter:** Irvin Shachter, legal services branch, Municipal Affairs and Housing.

The proposed motion does two things. First of all, it removes the minister's authority with respect to having to approve CIPs that contain financial incentives. It also cleans up the provision as a consequence of the removal of that authority. The minister's approval would be maintained, because there is a requirement that a municipality would have to consult with a minister when it is putting together its CIP.

1850

**Mr. Hardeman:** This still requires a certain amount of ministerial approval, but this amendment is removing the minister's need to approve.

**Mr. Shachter:** The provision would remove the minister's authority in approving CIPs that have financial incentives, but the municipality would still be required to consult with the minister in preparing their CIPs.

**The Chair:** Okay? All those in favour of the motion on 81a and b? Those opposed? That motion is carried.

Shall section 47, as amended, carry? Those in favour? Those opposed? That is carried.

Sections 48 to 71 have no amendments. We'll collapse them and deal with them all at once. Those in favour? Those opposed? They are carried.

Shall schedule C, as amended, carry? Those in favour? Those opposed? That is carried.

Moving on now to schedule D, section 1: There's a government amendment on page 82.

**Mr. Duguid:** I move that section 1 of schedule D to the bill be amended by adding the following subsection:

"(2) Subsection 11.4(3) of the act is amended by striking out 'subsection 128(4)' and substituting 'section 128.'"

This is a numbering change consequential to changes to section 128 of the Highway Traffic Act through Bill 130.

**The Chair:** Any questions? Seeing none, all those in favour? All those opposed? That motion is carried.

Shall section 1, as amended, carry? Those in favour? Those opposed? That is carried.

Moving on to section 1.1: There's a government motion on page 83.

**Mr. Duguid:** I move that schedule D to the bill be amended by adding the following section:

"1.1 Subsection 11.4(3) of the City of Hamilton Act, 1999 is amended by striking out 'subsection 128(4)' and substituting 'section 128.'"

It's similar to the previous motion, Mr. Chair.

**The Chair:** All those in favour of the government motion on page 83? Those opposed? That motion is carried.

Shall section 1.1 carry? Those in favour? Those opposed? That's carried.

Section 2: There's a government motion on page 84.

**Mr. Duguid:** I move that section 2 of schedule D to the bill be struck out and the following substituted:

"2. Subsection 12.4(3) of the City of Ottawa Act, 1999 is amended by striking out 'subsection 128(4)' and substituting 'section 128.'"

It's the same as the previous two.

**The Chair:** Any questions? Seeing none, all those in favour? All those opposed? That motion is carried.

Shall section 2, as amended, carry? Those in favour? Those opposed? That motion is carried.

Going on to section 3: A government motion on page 85a and b.

**Mr. Duguid:** I move that section 3 of schedule D to the bill be struck out and the following substituted:

"3(1) On the first day that this subsection and subsection 6(2) of schedule B to the Stronger City of Toronto for a Stronger Ontario Act, 2006 are both in force, clause 128(1)(d) of the Highway Traffic Act is repealed and the following substituted:

"“(d) the rate of speed prescribed for motor vehicles on a highway in accordance with subsection (2), (5), (6), (6.1) or (7);”

"(2) If subsection (1) comes into force before subsection 6(2) of schedule B to the Stronger City of Toronto for a Stronger Ontario Act, 2006 comes into force, clause 128(1)(d) of the act, as re-enacted by the Statutes of Ontario, 2006, chapter 11, schedule B, subsection 6(2) is repealed.

"(3) Subsection 128(2) of the act is repealed and the following substituted:

"“Rate of speed by bylaw

"“(2) The council of a municipality may, for motor vehicles driven on a highway or portion of a highway under its jurisdiction, by bylaw prescribe a rate of speed different from the rate set out in subsection (1) that is not



greater than 100 kilometres per hour and may prescribe different rates of speed for different times of day.’

“(4) Subsection 128(3) of the act is repealed and the following substituted:

“‘Same

“(3) The act of speed set under subsection (10) may be any speed that is not greater than 100 kilometres per hour.’

“(5) Subsections 128(3.1) and (4) of the act are repealed.

“(6) Clause 128(5)(b) of the act is repealed and the following substituted:

“(b) for motor vehicles driven, on days on which school is regularly held, on the portion of a highway so designated, prescribe a rate of speed that is lower than the rate of speed otherwise prescribed under subsection (1) or (2) for that portion of highway, and prescribe the time or times at which the speed limit is effective.’

“(7) Subsection 128(6) of the act is repealed and the following substituted:

“‘Rate on bridges

“(6) If the council of a municipality by bylaw prescribes a lower rate of speed for motor vehicles passing over a bridge on a highway under its jurisdiction than is prescribed under subsection (1), signs indicating the maximum rate of speed shall be posted in a conspicuous place at each approach to the bridge.’

“(8) Clause 128(6.1)(b) of the act is repealed and the following substituted:

“(b) prescribe for any class or classes of motor vehicles a lower rate of speed, when travelling down grade on that portion of the highway, than is otherwise prescribed under subsection (1) or (2) for that portion of highway.’

“(9) Subsections 128(6.3) and (6.4) of the act are repealed.

“(10) If subsection (9) comes into force on the same day or before subsection 6(5) of schedule B to the Stronger City of Toronto for a Stronger Ontario Act, 2006 comes into force, subsection 24(5) of schedule C is of no effect.”

What this complex motion does is it restores municipal authority to designate school zones and to erect enforceable school zone signs which are recognizable and important for consistency and driver compliance with lower speed zones in school areas and to promote greater safety for schoolchildren.

It also amends subsection 128(3) of the Highway Traffic Act to remove the inconsistency left in the subsection by Bill 130 by removing the requirement that rates of speed in construction zones be in 10-kilometre-per-hour increments with a lower limit of 40 kilometres. If this isn’t made, the municipality would not be able to use school zone signs to indicate the area is a school zone. Instead, it would be required to post standard speed limit signs with no distinction that the roadway is in front of a school. It could create a safety risk and some inconsistency. It ensures that municipalities retain the authority to use signage under the Highway Traffic Act.

I know it’s complicated, but what I’ve done is I’ve read out the explanation that staff has provided to us.

**The Chair:** Just to confirm, the clerk has asked that the first line on page 85b—the word you used was “the act of speed.”

**Mr. Duguid:** “‘Same

“(3) The rate of speed....”

**The Chair:** Yes. Thank you. Any speakers?

**Mr. Prue:** Yes, I just have a question. I’m in total agreement with all the stuff about the school zones and the buses and how fast you can go. On the first page, the “rate of speed by bylaw,” it talks about vehicles driven on a highway or a portion; it doesn’t say anything about the schools. Would this give, as an example, the city of Toronto, which has that portion of the Queen Elizabeth Way between the end of the Gardiner at the Humber bridge and the 427, which is, I believe, now a municipal highway as opposed to the QEW from that point, from 27 on—would that give permission for them to set a different rate of speed, and under the circumstance, is this a good thing?

**Mr. Duguid:** I’m not going to touch that question because transportation staff, I believe, as still here. Am I correct? I’m going to ask them to come up and respond to that quickly.

**Mr. Prue:** You can tell me if I’m reading it totally wrong or whether that would be allowed.

**Ms. Mary Preiano:** My name is Mary Preiano. I’m counsel with the Ministry of Transportation’s legal branch. What this does, essentially, is allow a municipality to set a rate of speed on highways that are under its own jurisdiction in any increments that it determines is feasible, as long as that rate of speed doesn’t exceed 100 kilometres per hour.

**Mr. Prue:** Yes, but the example is, I’m given to understand, a number of years ago, when the Conservatives were in power, they downloaded the QEW. They downloaded it to the municipality, and also sections of Highway 27 to the municipality. Where those go through the city of Toronto, can the city of Toronto, under this, set a different rate of speed on the highway, which is 100 kilometres an hour all the way from Niagara Falls or Fort Erie, and could they change the rate of speed for that section between the 427 and where the Gardiner starts? And, if so, is this a good thing?

**1900**

**Ms. Preiano:** If the highway were under the municipality’s jurisdiction, then it could, yes.

**Mr. Prue:** And is this a good thing?

**Ms. Preiano:** I’m not free to answer that.

**The Chair:** Thanks for the answer. Mr. Prue?

**Mr. Prue:** It may be a good thing; it may not. All these things are very complex. In the west end you have Highway 27, which has been downloaded. You have that portion of the Gardiner, which has been downloaded. I’m sure that every other municipality around the province has some highways that are like this, that run through. I just wonder about the hodgepodge sometimes where you have a highway that is eminently capable of taking



speeds at 100 kilometres an hour. If a municipal council, for whatever reason, were to choose 50, and they could—I'm not sure it's particularly a good thing that's being proposed here. It will increase irritability among drivers. They'll have to slow down if Howard Moscoe gets his way and puts a toll there; I don't know. I just ask the government if you think this is a good thing to be doing that.

**Mr. Duguid:** My understanding is—and I think staff know this issue better than I do; it's a transportation issue. The municipalities can decrease the rates of speed on their own roads, but they have to do it in certain increments. I think what this does is accommodate downgrades where they may want to slow down traffic by downgrades of 6% or more, and it's in school zones. I think that's what this motion does. But I'd have to defer to transportation staff on this particular motion, because I'm not as familiar with it as I'd like to be.

**Ms. Preiano:** That's correct. Municipalities currently have the authority to determine rates of speed on highways under their jurisdiction. Under the existing framework in the Highway Traffic Act, the rates of speed must be in 10-kilometre increments, and the lowest limit that they can prescribe is 40 kilometres per hour other than in traffic-calming areas, which would be 30 kilometres per hour. So this removes the requirement to set speed limits in 10-kilometre increments, and it has no lower limit.

**The Chair:** Any further questions? All those in favour of the government motion on pages 85a and b? Those opposed? That motion is carried.

Shall section 3, as amended, carry? Those in favour? Those opposed? That is carried.

Section 4: Shall section 4 carry? Those in favour? Those opposed? That's carried.

Section 5: We have a PC motion on page 85d, which previously was page 54.

**Mr. Hardeman:** I move that subsection 5(1) of schedule D to the bill be struck out and the following substituted:

"5(1) Section 20 of the Line Fences Act is amended by adding the following subsection:

"Right to cross former railway right-of-way

"(2) The owner of land that is bisected by a former railway right-of-way, and any other person with the consent of that owner, may cross the former right-of-way, at any time and without giving any notice, to get from one part of the property owner's land to the other part of the property owner's land."

**The Chair:** The version we have does not have "property owner." So I just want to confirm the last line, Mr. Hardeman: "to get from one part of the"—

**Mr. Hardeman:** Yes, "to get from one part of the owner's land to the other part of the owner's land."

**The Chair:** Okay, that's the copy we have too. Thank you. Are you speaking to it?

**Mr. Hardeman:** I read too many words.

This is a resolution to clarify the concerns of the Ontario Federation of Agriculture when it made a pres-

entation to make sure that as the ownership of the right-of-way transfers from one property owner to another—from the railway to either the municipality or from the municipality through to someone else for other purposes—that the owner who has a farm on either side is not restricted from getting from one piece of the property to the other.

In rural Ontario, these properties are not considered to be separate properties because the back portion of the farm generally has absolutely no other access to it other than across the railroad, so they don't have the ability to use it for different purposes. It always has to be combined through the railroad crossing. As long as it's a railroad, under the old railroad act, when the railroad was put through there that access was guaranteed to the property owners.

As we deal with this line fences problem along the railroad to alleviate some of the cost of building fences the total length of the railroad, which was also part of the agreement, the federation of agriculture's concern was that we were also moving their ability to access the back part of their property, and this would allow that, regardless of what happened to the railroad right-of-way that the farmer had no control over. They would be able to move across it freely, as they always have been able to do.

**The Chair:** Any further speakers? Seeing none, all those in favour of the motion on section 5? All those opposed? That motion loses.

Page 86, there's a government motion on the same section, Mr. Duguid.

**Mr. Duguid:** I move that the definition of "farming business" in subsection 20(2) of the Line Fences Act, as set out in subsection 5(1) of schedule D to the bill, be struck out and the following substituted:

"'farming business' means a business in respect of which,

"(a) a current farming business registration is filed under the Farm Registration and Farm Organizations Funding Act, 1993, or

"(b) the Agriculture, Food and Rural Affairs Appeal Tribunal has made an order under subsection 22(6) of the Farm Registration and Farm Organizations Funding Act, 1993 that payment or filing be waived; ('entreprise agricole')"

**The Chair:** Are you speaking to the motion?

**Mr. Duguid:** This amends the definition of "farming business" to clarify that all farming businesses qualified through the Farm Registration and Farm Organizations Funding Act, and those farming businesses which for reasons of religious conviction have had the payment of a registration fee or filing of a registration waived by order of the Agriculture, Food and Rural Affairs Appeal Tribunal are included in those farming businesses for which the qualifying owner of an adjacent abandoned rail right-of-way is responsible for fencing the lateral boundary. This was an issue raised by the Ontario Federation of Agriculture in its submission.

**The Chair:** Mr. Hardeman, did I see your hand?



**Mr. Hardeman:** Yes. If the parliamentary assistant could clarify for me, if the payment for filing is waived, what payment for what filing?

**Mr. Duguid:** All farming businesses qualify through the Farm Registration and Farm Organizations Funding Act. I suppose they have to file under that, but some farm businesses, for religious conviction reasons, don't make payment or register or file. The Ministry of Agriculture, Food and Rural Affairs will waive it under those circumstances, but given that the legislation was defining "farming businesses" as having been registered under the Farm Registration and Farm Organizations Funding Act, the federation was concerned that some businesses may not be caught in that, those that didn't file for religious conviction reasons.

Again, I'm not an expert on this stuff at all, but I believe that there are some types of farmers, maybe Mennonite farmers—I can't say for sure, but I think that's what it applies to.

**Mr. Hardeman:** I agree. I'm somewhat versed in who pays to file and so forth. The parliamentary assistant is right that there are certain people who, for whatever reason, decide they do not want to file. They can apply to the tribunal to have the fees waived. So under this section they would now apply under the Line Fences Act to have the right to have the municipality put up half the fence.

1910

My concern is that there's a third group of people for whom there is no law that says, "If you don't want the benefits, you don't have to register and you don't have to apply to have your fee waived, but your land is still agricultural land." Now, because of this definition, they would not be covered under the railroad Line Fences Act to have the assistance of the municipality to build half the cost of the fence, as we look at this. It seems to me that you need a third group of farmers or farmland that would qualify for this section. Because of mentioning the other two, we now have the third class that would not apply.

If my land that I own was along the railroad track, I would be one of those. Not that I want to be applying for it, but the truth is, it's farmland that I do not register as a farmer. I do not want the benefits that the government provides for the registration, but if there was a railroad running along the property, I would want to be able to have the owners on both sides to help with the cost to put up the fence. I think we're missing a section in this bill that deals with those types of farmers.

**The Chair:** Any further speakers? If not, those in favour of the government motion on page 86?

**Mr. Hardeman:** A recorded vote.

#### Ayes

Brownell, Duguid, Peterson, Racco.

#### Nays

Hardeman.

**The Chair:** That carries.

Shall section 5, as amended, carry? Those in favour? Those opposed? That is carried.

Sections 6 to 12 have no amendments. Let's collapse and deal with them as one. All those in favour? Those opposed? They are carried.

Section 13, government recommendation on page 86d.

**Mr. Duguid:** We're just recommending that the committee vote this particular section down. The site plan control authority for the city of Ottawa will continue to be maintained in the Planning Act.

**The Chair:** Any speakers to that?

Those in favour of section 13? Those opposed to section 13? That loses.

Section 14 has no amendments. Those in favour of section 14? Those opposed? That is carried.

Section 15 has one amendment to be distributed.

Does everyone have the motion in front of them? This is a PC motion, Mr. Hardeman.

**Mr. Hardeman:** I move that section 15 of schedule D of the bill be amended by adding the following sub-section:

"(1.1) Clause 3(2)(c) of the act is repealed."

**The Chair:** I've been informed by the clerk that this section is not open and would need unanimous consent to allow this. Do we have unanimous consent?

**Mr. Prue:** Granted.

**The Chair:** No objection, Mr. Hardeman.

**Mr. Hardeman:** It relates to the presentation that was made by Shoppers Drug Mart about the inconsistency of the opening in the act for this based on the size of the pharmacy, not just the portion of the building that was pharmacy but the fact that the total square footage of the store was restricted as to which ones could open and which could not. This just asks to repeal that. It still has the same implications for pharmacies to be open, but the Shoppers Drug Mart people and a lot of other people in that business feel it's unfair to have certain sizes of stores being restricted. They did a survey and, again, the numbers were quite telling. The majority of the population, regardless of the size of the store—85% of those who were surveyed, when they shopped in the drugstore, regardless of its size, when they went there when others were closed on public holidays, went to fill a prescription or purchase non-prescriptive health care needs. So it seems to be restricting businesses for the wrong purpose. That's why we put forward this amendment, to just remove that part that restricts a certain size of drugstore as opposed to what they sell. It would still maintain the connection that the primary purpose for the store has to be as a pharmacy, not as a large multi-purpose store.

**The Chair:** Any further speakers? Seeing none, all those in favour of the PC motion—sorry, Mr. Prue.

**Mr. Prue:** I just want to ask some questions. I'm a little bit worried about this. The deputant talked about towns that only have one drugstore and that drugstore is a Shoppers Drug Mart. I can be in full agreement, but I am worried about this motion and the negative effect it may have on smaller pharmacies, which have a difficult enough time competing already with the likes of



Shoppers Drug Mart and other big chains. Sometimes their major business is done on those days when the big chains are not allowed to operate.

We had a debate around the small drugstores during this session, and it was very contentious, with the number of small drugstores that may be forced to close because of the profit margin. That was more about the profit margin than this particular section. It was said that if those smaller drugstores were not able to compete, if they could not get the monies that they needed—they're not like the big guys; they're not like Shoppers Drug Mart—then they may be forced to close and, if they did so, a lot of small towns would have no drugstore at all.

I don't know. I'm just very nervous about this. I'm very nervous if it causes small drugstores in small towns to fold up and say, "We're out of here." If that would be the effect of the bill, even if it happened only in a few places across Ontario, those would be towns where there would no longer be an opportunity to have a drugstore and to get medically necessary drugs. If the mover can assure me that it's not going to in any way potentially drive out any small drugstores doing business, particularly in rural and northern Ontario, as a result of this, then I might concur. If not, it's a toughie.

**The Chair:** Any further speakers?

**Mr. Hardeman:** I would just like to point out that I share the concern about the smaller drugstores. I think the government's legislation that deals with the changes in the drug industry is going to have a major impact on some of the smaller rural pharmacies that can't operate on the margins and so forth that are being put forward.

This resolution, in my mind, if it has a negative impact—I just say "if" it has a negative impact—it will not be on other drugstores. The drugstores are part of where they sell other things too. In any municipality, town or village in Ontario where presently the only drugstore that's allowed to open is a smaller one, I think that wouldn't last long, because the rest of the time, if we get rid of the statutory holidays, they're competing against that same store that now supposedly can't open.

It's in the big towns, in the big cities, where the concern and the reason for this prohibition was put in place, where large establishments—dare I say the word "Wal-Mart"?—were having their big plaza opened strictly on the basis that they also sold drugs. This doesn't change the fact that they would then have to be primarily in the drug sales as opposed to general sales. We don't see this as in any way negatively impacting the smaller stores and smaller centres that are staying open now on those holidays.

**1920**

I suppose if a store's existence is based on being able to sell on holidays when the other store is forced to close, I don't think they would be able to sell drugs for very long. So I think this has more to do with the larger centres where these stores want to provide services but they can't if their competitors are going to be open when they can't be. Most of them are already open anyway

because they are within the square footage. It's just that if they want to provide a better service and larger service to their community, they can't do that because then they would have to close.

We think it's a positive step forward in allowing drugs to be sold 365 days of the year.

**The Chair:** Any further speakers? Seeing none, all those in favour of the PC motion on page 86e? Those opposed? That motion loses.

Shall section 15 carry? Those in favour? Those opposed? That is carried.

Section 15.1: There's a government motion on page 87.

**Mr. Duguid:** I move that schedule D to the bill be amended by adding the following section:

"15.1 Subsection 13.4(3) of the Town of Haldimand Act, 1999 is amended by striking out 'subsection 128(4)' and substituting 'section 128.'"

This is a consequential amendment that corrects a reference that is no longer accurate. It's to do with the Highway Traffic Act and some of the changes that we've made to it. Without this consequential amendment to refer to section 128, the Highway Traffic Act reference in subsection 13.4 of the town of Haldimand Act will no longer be accurate. So it's required to correct an inconsistency created by the bill.

**The Chair:** Any further speakers? Seeing none, all those in favour? All those opposed? That motion is carried.

Shall section 15.1 carry? Those in favour? Those opposed? That motion is carried.

Section 15.2: There's a government motion on page 88.

**Mr. Duguid:** I move that schedule D to the bill be amended by adding the following section:

"15.2 Subsection 13.4(3) of the Town of Norfolk Act, 1999 is amended by striking out 'subsection 128(4)' and substituting 'section 128.'"

The same as previous.

**The Chair:** Any speakers? Seeing none, all those in favour? Those opposed? That carries.

Shall section 15.2 carry? Those in favour? Those opposed? That's carried.

Section 16: There's a government motion on page 89.

**Mr. Duguid:** I move that subsection 16(2) of schedule D to the bill be amended by striking out 'Sections 1 to 15' and substituting "Sections 1 to 15.2."

Again, this is a motion that is consequential to our previous amendments.

**The Chair:** Any speakers? Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 16, as amended, carry? Those in favour? Those opposed? That's carried.

Shall schedule D, as amended, carry? Those in favour? Those opposed? That's carried.

Moving on to schedule E: no amendments in sections 1 to 8. We'll collapse those. Those in favour? Those opposed? That is carried.

Shall schedule E carry? Those in favour? Those opposed? That is carried.

We'll go back to the beginning of the bill now.

Shall section 1 carry? Those in favour? Those opposed? That's carried.

Shall section 2 carry? Those in favour? Those opposed? That's carried.

Shall section 3, short title, carry? Those in favour? Those opposed? That's carried.

Shall the title of the bill carry? Those in favour? Those opposed? That's carried.

Shall Bill 130, as amended, carry? Those in favour? Those opposed? That's carried.

Shall I report the bill, as amended, to the House? Those in favour? Those opposed? That is carried.

We are adjourned. Thank you very much.

*The committee adjourned at 1925.*









## CONTENTS

Monday 11 December 2006

**Municipal Statute Law Amendment Act, 2006, Bill 130, *Mr. Gerretsen* / **Loi de 2006**  
modifiant des lois concernant les municipalités, projet de loi 130, *M. Gerretsen*..... G-1011**

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### **Chair / Président**

Mr. Kevin Daniel Flynn (Oakville L)

#### **Vice-Chair / Vice-Président**

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)  
Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)  
Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)  
Mr. Kevin Daniel Flynn (Oakville L)  
Mr. Jerry J. Ouellette (Oshawa PC)  
Mr. Tim Peterson (Mississauga South / Mississauga-Sud L)  
Mr. Lou Rinaldi (Northumberland L)  
Mr. Peter Tabuns (Toronto–Danforth ND)  
Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### **Substitutions / Membres remplaçants**

Mr. Ernie Hardeman (Oxford PC)  
Mr. Kuldip Kular (Bramalea–Gore–Malton–Springdale L)  
Mr. Michael Prue (Beaches–East York / Beaches–York-Est ND)  
Mr. Mario G. Racco (Thornhill L)

#### **Also taking part / Autres participants et participantes**

Ms. Elaine Ross, senior counsel, Mr. Irvin Shachter, senior counsel, Mr. Scott Gray, counsel,  
municipal law section, Ministry of Municipal Affairs and Housing;  
Ms. Mary Preiano, counsel, legal services branch, Ministry of Transportation

#### **Clerk / Greffière**

Ms. Susan Sourial

#### **Staff / Personnel**

Ms. Cornelia Schuh, legislative counsel,  
Ministry of the Attorney General

16  
23

Government  
Publications

G-44



G-44

ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 26 March 2007

# Journal des débats (Hansard)

Lundi 26 mars 2007

**Standing committee on  
general government**

Regulatory  
Modernization Act, 2007

**Comité permanent des  
affaires gouvernementales**

Loi de 2007 sur la modernisation  
de la réglementation

Chair: Kevin Daniel Flynn  
Clerk: Susan Sourial

Président : Kevin Daniel Flynn  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 26 March 2007

Lundi 26 mars 2007

*The committee met at 1545 in committee room 151.*

## ELECTION OF ACTING CHAIR

**The Clerk of the Committee (Ms. Susan Sourial):** I'd like to call this meeting to order. In the absence of a Chair and Vice-Chair, we need to elect an Acting Chair. Are there any nominations?

**Mr. Tim Peterson (Mississauga South):** I move that Mr. Rinaldi act as the Chair until Mr. Lalonde arrives.

**Mr. Peter Kormos (Niagara Centre):** I second that motion.

**The Clerk of the Committee:** All right. Any further operations? Nope? Okay. Mr. Rinaldi?

## SUBCOMMITTEE REPORT

**The Acting Chair (Mr. Lou Rinaldi):** I would like to call the standing committee on general government to order to deal with issues with Bill 69. Our first order of business is the subcommittee report. Would somebody like to read it? It's the second page of what's on the desk.

**Mr. Kormos:** Chair?

**The Acting Chair:** Go ahead, Peter.

**Mr. Kormos:** I move:

(1) That the committee hold one day of public hearings at Queen's Park on Monday, March 26, 2007, and one day of clause-by-clause consideration on Wednesday, March 28, 2007.

(2) That the committee clerk, with the authority of the Chair, post information regarding the committee's business on the Ontario parliamentary channel and the committee's website. The ads are to be posted as soon as possible.

(3) That interested people who wish to be considered to make an oral presentation on Bill 69 should contact the committee clerk by 12 noon, Thursday, March 22, 2007.

(4) That on Thursday, March 22, 2007, the committee clerk shall supply the subcommittee members with a list of requests to appear received (to be sent electronically).

(5) That if all groups can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties.

(6) That groups be offered 30 minutes in which to make a presentation. (The committee clerk will consult with the Chair if there are more than four groups requesting to appear and the time for presentations will

be adjusted to 20 minutes to accommodate additional groups.)

(7) That, if there are more requests than can be accommodated with 20-minute presentation times, the Chair call a subcommittee meeting by conference call to discuss how to proceed.

(8) That the committee clerk, in consultation with the Chair, be authorized to schedule any late requests on a first-come, first-served basis, as long as there are scheduling spaces.

(9) That the deadline for written submissions be 12 noon, Tuesday, March 27, 2007.

(10) That the research officer prepare a summary of the recommendations heard.

(11) That the deadline (for administrative purposes) for filing amendments be Tuesday, March 27, 2007, 4 p.m.

(12) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Acting Chair:** Thank you, Mr. Kormos. Any debate on the recommendation from the subcommittee? Hearing none, then the subcommittee's report—

**Mr. Kormos:** Carried.

REGULATORY  
MODERNIZATION ACT, 2007LOI DE 2007 SUR LA MODERNISATION  
DE LA RÉGLEMENTATION

Consideration of Bill 69, An Act to allow for information sharing about regulated organizations to improve efficiency in the administration and enforcement of regulatory legislation and to make consequential amendments to other Acts / Projet de loi 69, Loi permettant l'échange de renseignements sur les organismes réglementés afin de rendre plus efficaces l'application et l'exécution de la législation de nature réglementaire et apportant des modifications corrélatives à d'autres lois.

ONTARIO PUBLIC SERVICE  
EMPLOYEES UNION

**The Acting Chair (Mr. Jean-Marc Lalonde):** Sorry for the delay. I'm Jean-Marc Lalonde. I'm replacing Jim Brownell today.



Our first presenter will be the Ontario Public Service Employees Union, OPSEU, Ms. Leah Casselman, president. Is she around?

**Ms. Leah Casselman:** Yes.

**The Acting Chair:** There she is. Ms. Casselman, welcome again to the general government standing committee. You have a total of 30 minutes. You could take the whole 30 minutes or leave some time at the end for questions from the three parties. If we only have a few minutes left, I will decide, in going around, if the questions are going to come from the three parties or just one, depending on the time we have left. You can proceed.

1550

**Ms. Casselman:** Thank you very much. Good afternoon. My name is Leah Casselman. I'm the president of the Ontario Public Service Employees Union. With me here today is Don Ford, our communications officer. I thank you for receiving our submission today.

I'm here on behalf of thousands of my members who are on the front line of public safety in the province of Ontario. Our inspectors ensure workplace safety, they protect motorists from unsafe vehicles—and no, Cam Woolley is not a member of our union—they protect our environment and drinking water and they ensure that meat is safe to eat and that our natural resources are protected. Our members also make certain that our province's tax laws are enforced.

Over the years, we have heard many complaints from our members about the frustrations that they have encountered in trying to do their jobs, everything from short-staffing, unavailability of proper equipment, being forced to adhere to quotas regardless of how complex the investigations are and, specifically within the Ministry of Natural Resources, the inability to do patrols because they don't have any gas to put in their vehicles.

That being said, Bill 69, the Regulatory Modernization Act, will go a long way in addressing one of our members' concerns: the inability to share information across ministries when there are violations of different kinds. We support the intent of this act, which will break down the silos of information that prevent, say, the Ministry of Labour being told about a safety violation that was discovered by an inspector from the Ministry of Transportation.

Our union supports anything the government does that will assist our members in fulfilling all the aspects of their jobs. However, we have some specific concerns about this legislation that is detailed in our written submission, but let me briefly describe those to you.

First, we have a real concern that Bill 69 could allow the creation of what we call super-inspectors. Currently, our inspectors receive specific, in-depth training on the legislation that applies to their job. This allows them to perform their inspections or investigations in an effective, competent manner and back it up in court when necessary. What we don't want to see are any initiatives that would require our inspectors to have to become experts in other fields. As you can imagine, the training

and experience an inspector would have in, for example, workplace health and safety would be very extensive. If that same inspector was then required to learn all the legislation from the Ministry of Transportation or the Ministry of the Environment, that would have essentially a watering-down effect on their job performance. We believe our inspectors are the very best at what they do. The people of Ontario depend on these inspectors to safeguard their lives and their health. Just like specialists in our medical community, we can only do the best that we can if we are concentrating on specific issues.

Our next concern flows from the first. If the new act allows for the creation of super-inspectors, we believe it will only be a matter of time before there will be layoffs and downsizing. While we have seen a substantial increase in the number of inspectors at the Ministry of Labour, many of our other ministries are suffering from short-staffing. There are simply not enough meat inspectors and transportation inspectors, not to mention the appalling lack of funding in natural resources for our conservation officers. We do not want to see an unintended consequence of this bill resulting in cross-training of inspectors and then a decision being made that would result in not filling empty positions or, worse, the downsizing of our current members.

Our last main concern is one of protection of information. A portion of the information our inspectors gather in the course of an investigation or inspection is private and confidential. Our members are governed by the Public Service Act, and that act regulates the privacy of information and how it is shared. Our apprehension is that there are agencies impacted by Bill 69 that do not have the same constraints of confidentiality that members of the public service do. For example, the Technical Standards and Safety Authority, the agency that inspects things like elevators, amusement rides and ski lifts, is not described under the Public Service Act. Therefore, there lies a possibility that information could be misused by non-OPS staff.

You will see in our written submission that, while the intent of Bill 69 is honourable, there are a host of barriers that will have to be overcome to truly make this act work. The government will have to standardize information technology systems in the ministries where information will be shared. Ministries will have to have a common approach to inspections, a common interpretation of policies, training for managers to eliminate the silos within the ministries, and a much better system to track orders and compliance activities.

This is a system that our members report is already one that doesn't work very well. We hope that you will find the information in our submission useful and that our concerns will be addressed. We also hope that this government will actually put enough funding into this initiative so that it will really work. Some of our inspectors out there, especially our conservation officers, are starving for funds. That is an unacceptable way for this province to safeguard the safety and health of its citizens. Let's work together and make this province a model for others to follow.



**The Acting Chair:** Thank you very much, Ms. Casselman. We will proceed with the questions with the official opposition.

**Mr. Gerry Martiniuk (Cambridge):** Thank you very much for your presentation, Ms. Casselman. I'm particularly interested in the question you raised in regard to sharing of information and confidentiality. It has always troubled me in this province that each police department—I'm talking about municipal forces now—have their own occurrence statement, yet we ask them to share information. But of course, if they're different occurrence statements, a particular item might appear in 5 on one of them and 6 on their neighbour, and it's very difficult, from a statistical standpoint, from a computer standpoint, to share that information. I can see that you've raised this, and I'd like you to comment on it. Do you envision that the inspectors would have some common occurrence or complaint or concern statement that they could distribute to other governments, or is that not something we should be recommending at this stage?

**Ms. Casselman:** I don't know about other governments. That certainly raises the question about public health. So if our meat inspectors—and, quite frankly, some of our staff in our investigative unit at the Ministry of Natural Resources were involved in the slaughterhouse in Aylmer, I think it was, which spawned the Haines commission for meat inspection. So if they come across something in the nature of their work that has a health and safety issue to it, I think there should be a common form or chit that they write out that's the same for everyone, to say, "I was here doing my inspection and found this," and then it gets forwarded to the proper ministry. So I think you would want some kind of common form so whoever is picking it up doesn't have to search the form to find out why they have it, so that they know exactly where to look on that form.

**Mr. Martiniuk:** Okay. Both of the points you've made make a great deal of sense to me, but there is sort of a conflict, because we don't particularly want to create a super-inspector, and yet, by having common forms, one would assume that one would be trained to complete those forms. There is nothing in the bill that says that these inspectors necessarily have to be actively seeking other concerns. It's sort of, if they come across it in the pursuit of their particular narrow field, they would report it, but there is nothing in here to say how they would report it. A common form might be of some benefit. However, without proper training, that could lead to wild goose chases, incorrect information and a waste of time. What do you think about that?

**Ms. Casselman:** If workers—of course, they weren't unionized in that slaughterhouse in Aylmer, but if they had been and had called in a Ministry of Labour inspector because there was something wrong with their equipment, I would think that whether or not you had any training in food safety, you might actually identify that the animal was dead before they "killed" it, which I think was the alleged case—as they're still in court, I should probably say "alleged" case—down there, that they were actually "slaughtering" dead animals.

What I was thinking about with the form—it's not that you would have the knowledge base, because a Ministry of Health inspector may not have all the knowledge of what's happening with an environmental spill, but they know something is wrong. So they would just send a basic form to say, "I've been here. You probably should be looking at this place."

1600

**Mr. Martiniuk:** Okay. Thank you very much.

**Ms. Casselman:** You're welcome.

**The Acting Chair:** I forgot to mention, we have 24 minutes for questions or comments and each party is allowed eight minutes each. I will move on to the third party, the NDP. Mr. Kormos.

**Mr. Kormos:** Thank you kindly for coming today. Section 9 is one of the operative sections that talks about enabling an inspector to report observations that may not have anything to do with his or her reason for being in that place. What's the status quo? I did the one-hour lead on this bill on second reading and I tried to flesh out the scenario as I saw it. What's the status quo? Are you telling me that if a Ministry of Labour inspector whose inspection is for the purpose of addressing workplace health and safety issues is in an abattoir and witnesses something suspect, they're bound by confidentiality not to pass that information along with respect to, let's say, improper handling of carcasses, what have you, in an abattoir?

**Ms. Casselman:** I'm going to let Don handle that one.

**Mr. Kormos:** Yes, please.

**The Acting Chair:** Can you identify yourself, please.

**Mr. Don Ford:** My name is Don Ford, communications officer with OPSEU.

Currently, there are pieces of legislation that do just that. They prevent, under confidentiality and privacy laws, the inspector from actually reporting that other violation because they were not there to look for that.

In practice, I believe that there's an informal practice that if there's a major problem at one of these sites, our inspectors are on the phone saying, "Look, there's a big problem here and you need to come look at it." I think one of the things that we do support about this bill is the fact that this is going to give some concrete authority now to these inspectors so that if they're in some place and they're doing a workplace accident and they see that there's a chemical leak, this gives them the solid authority to actually pick up the phone to the Ministry of the Environment to say, "There's a problem at this facility. You need to send an inspector down here."

I guess our concern is—and this goes back to what you were saying earlier—we know there's going to have to be some training just to comply with the act, to say, "If (a) occurs, then you do (b)." That should be consistent across all the ministries that have inspectors in the field. I guess what we are more concerned about is that they aren't training them to say, "Okay, while you're in there inspecting an accident for the Ministry of Labour, you need to be also noting the following things: Is their chemical storage in good order? Are their trucks in good



order in the parking lot? These are all the things you should be watching for while you're doing your other inspection."

I think that goes above and beyond what the act is trying to do, but at the same point there would have to be some common practices for the inspectors to be able to report all of these incidents.

**Mr. Kormos:** I appreciate that. This came up because sometimes people here can set up almost silly scenarios. Doing emergency management, we were talking about firefighters or police officers entering burning buildings and, for the life of me—while I suppose technically you're trespassing if you enter a building without permission of the owner, what would the damages be if, let's say, a firefighter were sued for trespassing for entering a building where perhaps there was no fire; he was mistaken? The damages would be zero. Similarly, you're suggesting that while the current legislation may preclude, in terms of the legislation, a public servant from responding in one way, shape or form to an observation, in practice their interest in public safety has motivated them to do what they've had to, refer the matter to the appropriate agency, because although it may be a breach of something, the consequences of that breach are nil. Is that fair?

**Ms. Casselman:** One of our MTO folks could be in doing an audit on a trucking company—that's mostly like paperwork, audit stuff—but while they're there, they notice some violations in relation to workers' health and safety or something; right? Currently, right now, it's a nudge-nudge, wink-wink and a phone call to their folks in the other workplace without any formalization.

**Mr. Kormos:** On second reading, New Democrats have stood with you on that proposition: that, in and of itself, this is a good thing to allow. However, we've also expressed your concern, because this facilitates—although it doesn't mandate—the creation of multi-tasking inspectors, if you will.

**Ms. Casselman:** If you were hiring computers, you could fill them up with all the knowledge, all the environmental issues around chemical spills and all that kind of stuff, or if it was the Ministry of Transportation, whether it's an audit of an auditing firm or whether it's putting on your overalls and figuring out why the truck is losing its tires, or the Ministry of Labour. Those are the types of things that you need in your head to do all those jobs. The Ministry of Labour has mines. There are different types of inspections, different types of workplaces, let alone natural resources, where they do all kinds of conservation enforcement and regulation out there as well. It just can't be done.

**Mr. Kormos:** I'm hard-pressed to think of how this bill could be amended to prevent section 9, for instance, from being misused by the government as an employer. But you're suggesting that were they to travel that route of multi-tasking inspectors, they'd be putting people's health and safety at risk.

**Ms. Casselman:** You'd have another Walkerton in five or six or eight years, however long that took,

because you simply can't do the job if you load people up with that kind of work. And we know there are governments that think that red tape is something—that this is all these workers do. There's red tape that actually protects people, and that's the kind of work that our inspectors do.

**Mr. Kormos:** Okay. Thank you kindly.

I do want, Chair—the Chairs have changed so quickly.

**The Acting Chair (Mr. Lou Rinaldi):** That's right.

**Mr. Kormos:** I have a couple of minutes. I do want the Hansard from this committee to contain the following comments on my part, because maybe five years or 10 years down the road a student of labour history in the province of Ontario will be working at the Hansard search desk and will be looking up "Casselman" and "OPSEU" and "committee"—

**The Acting Chair:** "Kormos"?

**Mr. Kormos:** I want that student to stumble across this observation, and that is that Leah Casselman has been one of this province's—one of this country's—great labour leaders; that her commitment to a professional, skilled, respected and fully resourced and staffed public service has been exceptional. She has fought some of the toughest battles, and she is held in the highest regard by her membership, by, I say, even some of those who belong to political parties that may from time to time have disagreed with her. New Democrats haven't; we're not in that position.

*Interjection.*

**Mr. Kormos:** We're not in that position. We think a lot of and we treasure and value the role that OPSEU plays. Leah Casselman has been an outstanding personality in this province, and I want that student, 10, 15, maybe even 20 years down the road, when—as the spokesperson, my name will be quite irrelevant. Perhaps there will be some obscure Trivial Pursuit players who will want to test each other with who that guy was from Niagara Centre. But I can tell you this: While our names will be forgotten, Leah Casselman's name will not. She will be remembered by successive generations of trade unionists and public service workers in this province.

**Ms. Casselman:** Thank you, Peter.

**The Acting Chair (Mr. Jean-Marc Lalonde):** Thank you very much, Mr. Kormos. We'll move on to the government side. Mr. Racco.

**Mr. Mario G. Racco (Thornhill):** Let me say that I do agree with the comments that Mr. Kormos made with regard to you, Madam Casselman. I certainly appreciated those comments.

I guess what I wanted to clarify, though, is—and I appreciate the concern that you raised. I want to make very clear, though, that we understand how complex the job of the inspectors is, and there is nothing that we would do to undermine or minimize the importance of the good training those inspectors have. They are highly trained professionals and, as I said, we want to maintain that because it's in everybody's best interests, not just the workers but the businesses and Ontarians. So we appreciate and we certainly have done our best to com-



municate that message to the people affected. But I want to make clear that we certainly appreciate that, and we will do all that we have to do to keep that.

1610

We all know that there are many complex and technical items that our inspectors must be addressing when they go to a location. Again, we want to keep them in the forefront. We know how well-trained the inspectors are. We know that they have to go through formal training, and after that, they also continue learning through other courses that they take to keep up with the changes that we have in our society today. So it's an asset for us that must be kept.

But I also want to stress one of the issues that you raised at the beginning: that you have some concern about the security of jobs and so on. You know very well that we certainly give significant importance to jobs. We made a commitment, for instance, to hiring 200 inspectors in the Ministry of Labour. We have done that, and you know that. Mr. Kormos knows that. What we have done, without getting into the political arena here—under the NDP, the number of inspectors went down. Under the PCs also, the number of inspectors went down. In our time, the number of inspectors went up by 200. So there is a commitment there.

We know that there is a need for additional inspectors. We did hire, and we want to make sure that nobody misunderstands our position. We needed them, and we committed ourselves to it. We did the hiring. There is no intention of cutting jobs. There is no intention of cutting corners. In fact, the intention is honourable, to say “thank you” to our inspectors because they are doing a good job, “thank you” because they are well trained. We want them to keep their professional standards at that level, because, quite frankly, the workplace is getting more sophisticated, more complicated. Those inspectors need to be well-trained for what they are doing. So that should be kept in mind.

In regard to the issue of good training and job security, I think our position has been clear. Of course, if it's not, I'll be happy to hear from you before my time is over.

Certainly, our inspectors, when they go on-site and notice something that in their opinion is not reasonable, and they wish to provide a heads-up to the proper ministry—I think it's the right thing to do. I believe, from what I know, that inspectors are quite content doing that. It's a heads-up. Nobody's asking them to take action in another ministry. They're only being asked, “Could you give us a heads-up,” so that the proper ministry will be able to judge that heads-up and take action if that ministry which is responsible feels that there is a need to do so. Those inspectors are not asked to do really much more than just give a heads-up to the proper ministry. Again, I think it's quite reasonable.

I do have a question for you, if I might. I understand that OPSEU co-sponsored a workshop with the II&E secretariat in October 2006 to discuss the Regulatory Modernization Act with front-line staff. I wonder if you could provide some details about that workshop so that we know more about it.

**Ms. Casselman:** Yes, that actually makes up the written submission that we've provided for you. Those are the comments from the people who attended that workshop. As you can see in the first paragraph, the Regulatory Modernization Act affects 13 ministries, so recognizing that the Ministry of Labour has found funding from the WSIB—maybe you could go back and see if they want to fund an adequate level of staffing for all those other ministries. The Ministry of Labour has staffed up, but we don't have enough meat inspectors or environmental officers or conservation officers; there are big holes out there. If this legislation impacts all of those workers doing all of that work—we're not just talking about the Ministry of Labour.

**Mr. Racco:** You also know that the Ministry of the Environment hired additional inspectors, the Ministry of Revenue added additional inspectors and, in particular, in the Ministry of Agriculture, we had a major increase in inspectors. Are you aware of that?

**Ms. Casselman:** Well, I won't get into a discussion with you about whether or not they're full-time positions or part-time positions with the Ministry of the Environment workers. I do know there are still some holes out there in relation to meat inspection. Clearly, in the Ministry of Natural Resources there is no regulation going on in natural resources. There is no money to put gas in the cars of the conservation officers, so there are big holes out there for the government to fill.

**Mr. Racco:** One of the issues that, unfortunately, we had to deal with was the Walkerton matter. Of course, we did hire additional inspectors for the Ministry of the Environment to address that issue. Certainly that is a step in the right direction.

**Ms. Casselman:** Oh, I'm not disputing that it's a step in the right direction. But it's a system; if there's one leg that's not working, then you're not walking effectively. You're talking about health care and education on the one hand, and yet parks aren't being able to allow kids to come out and get some exercise because the resources aren't there, or our natural resources are not being conserved and protected because they don't have gas to put in their cars to do their work. There are broader issues that will come down to haunt us later on.

We recognize that there are things happening. I guess the luxury of being in the office I'm in is that I get to look beyond the next electoral cycle. I'm looking down to the future to see what might happen to public sector jobs and whether or not this is being packaged up in a way that says, “Gee, we could probably just call them all super-inspectors and cut back by 50% and still look good.” That's our fear, because we look down the road beyond the next electoral cycle to see how legislation is being crafted, whether or not it could be changed—which of course it can be, because this employer's the only one in the province that can change the laws, and does on a regular basis. We're looking back at our history and also looking forward to the future. We anticipate some changes to the legislation. We hope there are some changes to the legislation. We think there are some good



things happening here, but we also have some concerns as well.

**Mr. Racco:** Okay, and that's why we're here, to hear your concerns, and following that, the minister will certainly give leadership in that direction.

I have another question, if I may—

**The Acting Chair:** Your time is up, Mr. Racco.

**Mr. Racco:** If it is, again, I thank you for your time, both of you.

**Ms. Casselman:** I encourage you to read the report at the back of the presentation.

**The Acting Chair:** Ms. Casselman, I want to thank you very much for giving us this written submission. Just keep up the good work here that you're doing for our public service employees.

**Ms. Casselman:** Thank you very much.

**The Acting Chair:** Thanks again.

**Mr. Kormos:** Now, Chair, if I may, on a point of order concerning the warmth in here, I notice that all of my male colleagues but for Mr. Duguid have removed their jackets because it's warm. I would invite and encourage them to remove their neckties as well. It wouldn't offend me in the least, and they will be much more comfortable.

**The Acting Chair:** Should we give you the permission for that?

**Mr. Kormos:** Oh, it's a matter of seniority rights.

**The Acting Chair:** Okay. That will be it.

#### CANADIAN MANUFACTURERS AND EXPORTERS

**The Acting Chair:** The next presenter will be Canadian Manufacturers and Exporters. Could we ask Mr. Ian Howcroft, who is the vice-president of Ontario division—and you are accompanied by Paul Clipsham?

**Mr. Ian Howcroft:** That's right, Chair. Thank you.

**The Acting Chair:** He is the director of policy of Ontario division. Welcome, Mr. Howcroft and Mr. Clipsham. You have 30 minutes. You can take the whole 30 minutes or leave some time for questions or comments at the end. The time left will be divided amongst the three parties.

I want to say also that Mr. Howcroft is one of our members of the SBAO, the Small Business Agency of Ontario. Welcome.

**Mr. Howcroft:** Good afternoon. As the Chair said, my name is Ian Howcroft and I am vice-president of the Ontario division for Canadian Manufacturers and Exporters. With me is Paul Clipsham, who is our director of policy.

CME wishes to thank the standing committee on general government for this opportunity to provide input in your evaluation of Bill 69, the Regulatory Modernization Act. Before I talk about the substantive issues of the bill, I think it is important to highlight a few things about CME and the importance of manufacturing in Ontario.

Canadian Manufacturers and Exporters is the voice of manufacturing and exporting in the province. Our member companies account for over 75% of the total manufacturing output in Ontario and approximately 90% of Ontario's exports.

1620

CME represents a broad variety of industry sectors, including automotive, plastics, steel, pharma, food, resource-based and high-tech industries. It's important to note that a significant portion, almost 85%, of our members are small and medium-sized enterprises, hence, apropos the Chair's comment about the Small Business Agency of Ontario and our involvement with it. Consequently, CME is well-equipped to represent the voice of manufacturers in Ontario.

Manufacturing comprises about 20% of the province's gross domestic product and contributes about \$300 billion to the Ontario economy annually. Further, the manufacturing sector provides employment to over one million Ontarians directly and almost another two million indirectly.

We have all read the stories and heard the news concerning the challenges that are facing manufacturers. Over the last two years, Ontario has lost over 100,000 jobs and we have experienced about 300 plant closures. Increasing competition, the high dollar, skill shortages and rising input costs have all contributed to the challenges that we are facing. To help deal with these challenges, CME launched our 20/20 initiative, the Future of Manufacturing. It deals with what we must do now to ensure that we have a vibrant and growing manufacturing base in the year 2020. It's also a little play on words to create that perfect or strategic vision for manufacturing, the 20/20 vision. There's a lot to do, including improving the image of manufacturing and making sure that everyone understands how important it is to the economy and how much it contributes to the province.

We're pleased that last week's budget provided for the creation of the Ontario Manufacturing Council, something that CME has been advocating as a vehicle to positively and productively deal with the challenges facing manufacturing. We were also pleased to see the announcement regarding the business education tax, but we were again disappointed that no immediate action was taken to eliminate the capital tax.

On behalf of CME, I would like to thank the committee for this opportunity to express our views on Bill 69. But before I begin the substantive comments to the bill, I would like to express our frustration with the short timing on the hearing process. The period from the initial posting of the public hearings on March 20 to today was about six days. The period from which time we received confirmation that we'd be making a presentation was only one full business day to prepare.

Our procedures dictate that we engage our members on issues of concern, and these timelines did not provide that opportunity whatsoever to engage our members effectively prior to this hearing. Fortunately, CME has been participating in the consultation over the last



months and we were able to put together a presentation that we hope will be of use to the committee. However, extending the duration of the preparation period would enhance the value for future committee proceedings and the democratic process, so we would encourage that to be taken into consideration in the future.

As mentioned with regard to Bill 69, we have been very active on this file and have participated in many meetings with the Ministry of Labour. We've appreciated the opportunity to provide our input throughout that consultation period. We have been supportive of the broad goals and intent of the bill—the reduction of compliance costs for businesses and government and the targeting of worst offenders. However, CME has continued to express its concern with certain components of the bill that go far beyond the bill's policy intent, which could result in unintended consequences to many companies and organizations.

First, I would like to raise our concern with respect to the unnecessarily broad categories of information that may be collected, used and disclosed under the bill. It is essential that the categories of information be limited to those types of information which are actually required to be shared by ministries to assist in effective enforcement. Collection and potential publication of competitively sensitive information and business confidential information should be beyond the scope of this bill.

Further, the provisions of the bill providing for disclosure to the public are also, in our view, far too broad. A company's reputation could be seriously damaged with the publication of an unsubstantiated complaint, which could result in irreparable damage to the company, the employees and the community. Consequently, there should be restrictions in place to ensure that only complaints that have been validated through proper and appropriate due process be considered for publication.

I would also like to raise our concerns with the potential for the creation of the super-inspector position. While this sounds like a reasonable option, we must seriously question how this could work in practice. The technical knowledge and aptitude necessary for someone to conduct this role as intended would be enormous, and thus we feel it would not work in practice.

It's also important to raise the issue regarding the so-called heads-up provision. If an officer notices a problem at a site and will be notifying another official, it is essential that the employer be advised of that issue immediately. This would allow the employer to address the situation right away and prevent it continuing until the next official or officer could attend the site.

I'd now like to turn our presentation over to Paul, who will provide some additional details on our concerns.

**Mr. Paul Clipsham:** Thank you, Ian.

In addition to raising our concerns with the Ministry of Labour directly, CME also participated in a coalition of 12 leading industry associations to develop and identify common concerns and recommendations regarding Bill 69. This group's activities culminated in the development and signing of a letter posted to the EBR outlining

the common concerns and recommendations. I have distributed copies of this letter for your consideration.

I will now briefly outline these concerns, with examples from specific sections of the bill. The consensus of the group was that publication of business-sensitive information respectively was the primary concern for business. Even the limited protections that exist under section 17 of the Freedom of Information and Protection of Privacy Act, FIPPA, appear to be abrogated in section 10 of Bill 69. For example, paragraph 3 of subsection 10(4) currently states: "Information about complaints filed in respect of an organization where the complaint is regarding conduct that may be in contravention of the designated legislation."

Complaints could prove to be unfounded, and if unfounded complaints were published, damage to a company's reputation could be irreparable. We recommend that publication of information be related only to convictions or contraventions under designated legislation that have been validated by judicial process.

Secondly, collection, use and disclosure of business information was of significant concern to the extent that this information could be publicized; for example, subsection 4(8), regarding collection of information about tests or audits, is a concern to business. Tests, for example, can change. A company with a strong track record of success in one test could demonstrate skewed results under a new test. If that new test information is collected, used and publicized without due process to identify, for example, whether it is the test or the company that is in error, there is a risk of unintended damage to a company's reputation.

Further, the collection, use and disclosure of information regarding forms, notes or reports generated in the process of the aforementioned tests, audits or inquiries extends the concern that invalidated subjective information of this nature is neither constructive nor conducive to meaningful inspection and analysis of any company—worst offender or otherwise.

Thirdly, the group agreed that the bill is not explicit enough to ensure relevancy of the information collected, used and disclosed. For example, subsections 4(9), 7(7) and 14(2) of the bill all deal with retroactive collection, use and disclosure of company information. We are deeply concerned that this may lead to collection of irrelevant information and inadvertently result in targeting companies that have a long history of business operations in Canada. For example, a leading company that has existed for over 100 years may have, through its evolution, experienced a contravention that no longer reflects the culture, values, actions or record of that company's performance in recent years. We recommend that limitations be considered to ensure that inspections reflect a company's current or relevant performance.

The coalition also agreed that the so-called heads-up provision had potentially unintended consequences that should be addressed. Alerting a business to an issue immediately is critical to ensuring safety and security at that company.



The group also identified the potential for the super-inspector under section 13 and limited culpability of the crown under sections 15 through 17 as concerns. I encourage you to review the letters for details of these concerns.

Ultimately, there is a great deal of potential for this legislation to be a win-win for business and government if it can achieve the stated intention of reducing duplication in the regulatory compliance activities to which businesses are subject. The link between increased sharing of information among ministries and the reduction of duplication in compliance activities needs to be clearly articulated in the legislation.

In conclusion, Bill 69, the Regulatory Modernization Act, is a very significant piece of legislation. It presents opportunities for improving conditions for the workforce, government and responsible employers. Consideration of the above concerns and recommendations is strongly urged, with a view to corrective action in the interests of all stakeholders.

Setting parameters for publication, collection, use and disclosure of business information is essential. By providing greater clarity on how information may be used, unintended consequences such as those identified can be avoided.

We believe that these concerns and recommendations, if acted on, will enhance the bill further toward the stated intention of "improving protection of the public, workers and environment; reducing duplication in the regulatory compliance activities to which businesses are subject; and maximizing government resources."

It is our hope that we can resolve these issues and move forward in the spirit of collaboration. We would be pleased to answer any questions you might have at this time.

1630

**The Acting Chair:** Thank you. We have approximately 18 minutes left, and that would give six minutes to each party. Due to the fact that Mr. Kormos has left, I'm going to move to the government side. Mr. Racco.

**Mr. Racco:** I have six minutes, right?

**The Acting Chair:** Yes.

**Mr. Racco:** You raised a few questions, for instance in regard to information that we intend to publish. It's the business community, as you know, that has in fact been raising that concern, because it's the business community that wants to make sure there is a fair playing field and that if there is an industry and/or a company that is not performing as it should, we can take steps to address that concern. That is why we see merit in publishing information. Of course we also know that we have to be extra careful in what information, and I think that's really your concern. We appreciate the importance of the fact that we could affect someone significantly. We certainly have paid, and intend to pay, attention to make sure that doesn't happen. It's not in our interest and it's not in the interest of Ontarians or the business community for that to happen. In fact, the workers who are working for that business could be affected if that is the case.

I also want to make sure you know that we have consulted with the Office of the Information and Privacy Commissioner and the commissioner feels comfortable with the approach we are taking. I think it should give you some degree of comfort that we appreciate the importance that we are doing what we mean to do.

In regard to the superinspector—I already answered that question on the first deputation—the people you represent appreciate the importance of having someone who is quite knowledgeable of the industry, and we do. That is why we're making sure they have training and that the training continues. That is why we are increasing the number of inspectors, to make sure we have enough people to do the job, and that they have the time to get training.

Again, I think we have responded quite reasonably to that concern of the people you represent on the issue. Again, we are not expecting people to go there and do something that's not—we only expect that they report what they notice. They're not there to investigate something else. They're there to do their job, and if they happen to see something that is not their job but in their eyes is not reasonable, then they have the opportunity to call the ministry responsible and say, "That's what we saw." Then it's up to that ministry to decide what the next step is. So we're not putting any pressure on those inspectors to do more than what, generally speaking, they are doing.

Again, I appreciate your concern; I think it's valid. But I think we have taken the proper steps to address those things.

I have one question or so, depending on the time, that I would like to ask. The question is: In your experience, how often and what types of information are businesses in your industry required to provide to multiple ministries?

**Mr. Howcroft:** I'm sorry. Can you repeat that?

**Mr. Racco:** From what you know, how often and what type of information are the people you represent in the industry, the business community, required to provide to a different number of ministries?

**Mr. Howcroft:** I guess it depends on the issue. There are some that cover several issues, several ministries. If it's a health and safety issue, where we're providing information on a health and safety complaint or a health and safety situation or a health and safety inspection, there's some overlapping with regard to the Ministry of the Environment—some of the information that's required there. It just depends on the situation and the ministries that are involved as to what's required.

We agree with the intent of the bill and don't have problems with the goals and what we're trying to do. As an example, we don't have a problem with the heads-up provision. We don't have a problem with the person who's there letting the appropriate ministry official know about that. What we're trying to make sure happens too is that the employer is told of that. For example, if it was a health and safety issue someone noticed and contacted the Ministry of Labour and they came in a week later, we



would like to think that the employer was aware of that immediately so they could take the corrective action to make sure the workplace is free from any safety issues or concerns, rather than the way the bill is written now, where the employer may not find out about that and may have a situation that continues until the next official who has that expertise comes in for their visit.

**Mr. Racco:** But you would agree with me, though, that the people you represent quite often spend lots of time providing the same information to different ministries.

**Mr. Howcroft:** Yes, and again, we agree with the removal and elimination of duplication as much as possible. Our concern was around having the expectation that you could have a super-inspector be knowledgeable in all areas. There are new health and safety inspectors in Ontario, as you pointed out, but they're not completely trained in health and safety yet, let alone environmental issues and some of the other things that we're concerned may be required of them that seem beyond reason.

**Mr. Racco:** On the same topic of duplication, what are some of the examples of duplication in regulatory compliance activities that you see in your industry? Can you give us some examples?

**Mr. Howcroft:** Do you have any of the examples that were discussed?

**Mr. Clipsham:** There aren't too many specific examples that I could give you at this time, but what we hear from our members is that there is a wide range of regulatory compliance things that they have to go through on an ongoing basis. If there was a mechanism in this bill that would not only break down the silos, if you want to call them that, between ministries but also recognize where there is duplication, find that duplication and then eliminate it, that would be a win for business.

**Mr. Racco:** Okay, and—

**The Acting Chair:** Sorry, the time is up. I will move on to the official opposition.

**Mr. Martiniuk:** Thank you, gentlemen, for your presentation. I'd like to deal mainly, because we only have six minutes, with the particular section that you've raised: paragraph 3 of subsection 10(4) of the act, which reads: "Information about complaints filed in respect of an organization where the complaint is regarding conduct that may be in contravention of the designated legislation" that's set out.

It would seem to me that this is an authorization to the government—not just this government; any government—to publish the fact that complaints have been received. There is in this section or in this act no safeguards that (1) there was any truth to the complaint, or (2)—and the absence of this is amazing—that the complaint was made bona fides. It could be a complaint made by a disgruntled employee. It could be a disgruntled customer. It could be anyone making the complaint, not bona fides but in fact to injure the reputation of a corporation or a business entity.

It seems to me that no government should be broadcasting rumour and innuendo, for that's all that this is,

since it has no safeguards. If we had built safeguards into this in some manner, even a statement that because these complaints were investigated and determined to be bona fides doesn't mean that they're right, then I would feel a little more comfortable, but not much, because there is absolutely nothing in this act to protect any individual against unfair and non-bona fide complaints being made. I think that's a most dangerous situation, and I don't know why it's necessary, quite frankly. There's a whole range of information that will be issued to safeguard the public. This complaint, though, really makes it difficult for myself, as a former lawyer, especially where I thought that in this country and under our Constitution all individuals were in fact innocent until proven guilty.

1640

Here, without any investigation as to the veracity or the bona fides of a complaint, we are about to broadcast this to the public. It could be libellous; it could be slanderous. There's nothing in this act to prevent it. It just seems a really outlandish step, and I don't know why the government would include such a dangerous precedent in the legislation. Do you have any ideas in your discussions with the staff at the ministry why this most dangerous of all provisions was included in this legislation?

**Mr. Howcroft:** No, I don't, but it's an issue we have raised at every meeting we've had with them since we became aware of what was in the bill. We don't think you should be able to publish complaints, particularly those that are unproven, unfounded. We strongly urge that changes be made to ensure that only complaints that are investigated and decisions made—should that information be made public or considered for publication, otherwise you're subject to doing enormous damage to a company's reputation and its economic viability, the employees who work there and the community where the company operates. We continue to raise and have been raising that for quite a while now.

At some meetings we've had, I think we've had a receptive ear to those concerns, but at others we're not as confident that we were being heard on that. But it's something that we can completely agree with.

**Mr. Martiniuk:** Chair, I was wondering if I could direct my question to Mr. Racco. I'm not asking you to answer it, however. Before we should be considering this legislation and this particular odious—and I use the word advisedly—section, surely there should be some explanation or historical background that the ministry has that could assist members of this committee to determine why this provision was even included in this act.

**Mr. Racco:** Mr. Chairman, I will be happy to ask the staff of the ministry to provide that historic information that my friend is asking for. Staff are here. I'm sure that they will be able to satisfy his question.

**The Acting Chair:** Could we have staff to answer Mr. Martiniuk's question? If you would give us your name for our record purposes.

**Mr. John Stager:** My name is John Stager, and I'm the assistant deputy minister of II&E business transformation with the Ministry of Labour. I've been one of the executive leads for the Regulatory Modernization Act.



With regard to the complaint issue, maybe a bit of a premise on the bill in terms of the policy work that we've done: One of the things we've seen as we developed the bill was that complaint information was and is being published by line ministries right now. You see a variety of kinds of complaint information being published by line ministries. For example, in a number of ministries now they will publish information about a series of events that have taken place with a regulated entity in the regulated community.

As part of telling the story about a regulated entity, they may start by saying the initial cause of the circumstance was a complaint by X company or X individuals which led to a series of events, follow-up inspection and possible other kinds of events. So there are ministries that are doing that. In fact, most ministries are using complaint-related information right now in publishing that kind of information.

What this is doing, the intent behind this piece of the publication, is to try and bring some consistency to it, to say that we recognize that it's being done right now. In terms of legal, there is a grey area in terms of the use of complaint information. Really, the premise behind this and the inclusion of it in the bill is to be able to draw from complaint information as part of a broader scenario about compliance and be able to share that broader story about the compliance picture for a regulated entity or a series of regulated entities.

**The Acting Chair:** Thank you, Mr. Stager. I believe you wanted to—

**Mr. Martiniuk:** Excuse me, Mr. Chair. That is the most astonishing explanation I have ever heard since I became a member of this Legislature: the fact that people may be acting illegally now means we should codify it and make it legal. Surely that is not an explanation. That's just a fact as to what is happening now, but that's doesn't excuse why it is put in this legislation in order to regularize and make it legal. It could be that those ministries are acting illegally up to now as far as the freedom of information act.

**The Acting Chair:** Sorry, Mr. Martiniuk. Our time is—

**Mr. Martiniuk:** I'm sorry. Thank you.

**The Acting Chair:** Mr. Kormos, from the third party.

**Mr. Kormos:** I'm sorry I had to leave for a few minutes. I have read your brief. I was drawn to that regulatory power, as was Mr. Martiniuk. Obviously, this is in the context of section 15 as well, which is the immunity section in terms of any civil action. I agree with Mr. Martiniuk. It's one thing to identify complaints in terms of, let's say, classes or areas; it might be of value of understand that there have been a number of environmental complaints around a specific issue. But if the publication of the complaint includes—you're talking about complaints. Let's say, if a charge is laid—because it's public information; I understand that. But you're talking about a complaint as a result of which a charge may not necessarily even have been laid, insofar as I understand and read the regulatory power. That, I agree, is offensive.

Once a charge is laid, it's a public record, the information itself. I'm not sure the ministry has to provide that material; that's another discussion. But I have a concern especially with section 15, because the business community talks about the potential damage that can occur, then, with section 15, which appears to protect anybody who publishes, as long as they're acting in good faith, even perhaps erroneously. It can be erroneous information, as long as it's done in good faith.

If you're in the competitive world of bidding on contracts, international stuff, and international potential partners access these websites in the course of, let's say, due diligence, as they should, this could queer a deal that's worth millions of dollars. That has any amount of great potential. So I find that interesting.

But you wrote your letter, the one you provided us, to the assistant deputy minister. Have you had a reply yet to your July 31, 2006, letter?

**Mr. Clipsham:** Yes. John has been—

**Mr. Kormos:** So this isn't the first time you've heard that comment around the regulatory powers and complaints?

**Mr. Howcroft:** We've had numerous meetings with John and others at the ministry in other capacities as well.

**Mr. Kormos:** So he has been co-operative and forthcoming, right?

**Mr. Clipsham:** Yes.

**Mr. Kormos:** What you're saying now is maybe you'd like the political end, the government, to be as co-operative and forthcoming as a professional civil servant. Is that fair?

**Mr. Clipsham:** Yes. That's a fair statement.

**Mr. Howcroft:** We think it's a positive change to the act that we're trying to get here in the business sense, in the economic sense.

**Mr. Clipsham:** Common sense.

**Mr. Kormos:** Thank you. Thank you, Mr. Martiniuk, for focusing on that.

**The Acting Chair:** Thank you, Mr. Howcroft and Mr. Clipsham. Did I pronounce it properly this time?

**Mr. Clipsham:** You did.

## CANADIAN FEDERATION OF INDEPENDENT BUSINESS

**The Acting Chair:** The next group will be the Canadian Federation of Independent Business. I believe they've just arrived. If you could come and take a chair. Welcome to the standing committee on general government on this very important issue, Bill 69. You have 30 minutes. You could take the whole 30 minutes or leave some time at the end for comments and questions from the three parties. Whatever is left will be divided equally among the three parties. If you could start with giving us your name for record purposes, and proceed.

1650

**Mr. Satinder Chera:** Thank you, Mr. Chair, and good afternoon, everyone. My name is Satinder Chera, and I'm the director of provincial affairs with the Canadian Fed-



eration of Independent Business. I'm joined today by my colleague Tom Charette, who is the federation's Ontario senior policy analyst.

We appreciate the opportunity to appear before you today to comment on Bill 69, the Regulatory Modernization Act. We think that despite the rosy title it has been given, it could have a potentially devastating impact on small and medium-sized firms in the province, and we'd like to speak specifically about those concerns today.

Before I do that, I think you have all received our kits. I will be speaking from the slide deck that is entitled "The Regulatory Modernization Act and Small and Medium-Sized Businesses." On page 2, our presentation just gives you an overview of what we want to discuss today. I'm going to start off by giving you the status of our members in the province and how they're doing and then get into what we see as a pivotal issue in this bill, which is government regulations and the impact they have on small firms; talk a little bit about the devastating effect that regulations have on the SME sector; give you a few examples; and wrap it up with a series of our recommendations for making this bill more friendly and giving small firms the ability to also take part in making our workplaces safer.

Page 3: I think most of you have already seen our member profile in Ontario. We do cover off most of the sectors in the economy.

Page 4 is our small business barometer, something that we put out on a quarterly basis; the next one will be coming out on Wednesday of this week. This gives you a bit of an overview of our members' expectations and how they've been sliding down or sideways over the past year, which is of course a big concern for us.

Page 5: As you know, we are guided by our members in terms of the issues we tackle and the concerns we bring forward, and the presentation today is very much predicated upon what our members are telling us is a big concern for them. I mention at the outset that government regulations and paper burden are a huge impediment for our members and not something that I think is very pivotal to this legislation before you today.

Page 6: At the outset, let me say that I think we can all agree that regulations are not inherently bad. Our members would agree that they do have a purpose in our society, but individual regulations can be a bad thing if they fail the test of being effective or if they fail the cost-benefit analysis. As well, the sum total of all regulations can be a bad thing if it exceeds government's capability to administer or it exceeds the SME capacity to cope with the burden that has been imposed upon them.

I hear the bells. Should I continue?

**The Acting Chair:** You can continue.

**Mr. Chera:** Page 7, the regulatory burden on small firms: Premier McGuinty made a commitment to our members in the last campaign to reduce the burden that our members face. Unfortunately, the reality is that the burden continues to increase, and these are just a few

examples of the amount of regulations that our members are having to now contend with.

Page 8: There is virtually no attempt to really control or to manage the size of the regulatory workload or the regulatory costs that government imposes on itself and on small business.

Additional regulations continue to pour out from all levels of government. Government regulations far exceed the ability or the capacity of the small business sector to cope by at least an order of magnitude.

Governments have far exceeded their own capacity to administer these regulations, and so, when we get to Bill 69, the short of it is that Minister Peters's plans to ramp up inspection or compliance with all 85 statutes and the some 600 regulations that the province has on the books could very much leave our members looking like sitting ducks. I think that's something that none of us wants, but that's the reality, the impact that this bill is going to have on the SME sector.

What I'm going to do is turn it over to my colleague Tom Charette, who's going to take you through the specific concerns we have with Bill 69 and then round it out with our recommendations.

**Mr. Tom Charette:** Good afternoon, ladies and gentlemen. I'd like to take you through some of the effects of the existing regulation on SMEs. If you want to follow along on the screen here, perhaps it will be a little easier for both of us.

I would like to preface what I'm going to say by saying that we get a lot of phone calls from members who are upset with competitors who aren't in compliance with one thing or another. There's a lot of pressure on us from members to deal with things like the underground economy. When we have tested members occasionally, sometimes at the behest of a government agency, "Would you approve of an amnesty for those who've not been collecting taxes or not paying WSIB premiums or the like?", our members don't like that. They don't even want to go that far to get them in the tent. They think that if you broke the law, you ought to pay for it. I want you to know that although I'm going to try to convince you here that the government has got a lot of work to do in its own backyard before it applies this to small and medium-sized businesses, the basic attitude of our members is, they want to be rule abiders and they want their fellow business people to be rule abiders.

The demographics of the small business or the business sector in Ontario are related to what I'm going to try to convince you of. In the province, over 70% of business units that have employees have less than five, and another 18.5% have between five and 19. The really big units of business, over 500 and such, are a very small fraction of the total business units. How does that come to apply to regulation, or how does it bear on it? Well, at the smallest level, at the 70% to 75% that have less than five employees, the owner tends to work alongside his or her employees during the day, giving speech therapy, working a retail floor, putting up drywall; all sorts of activities. It's only at night that they get to run the busi-



ness and comply with all the many things that government asks them to do, from collecting taxes to abiding by other forms of regulation—things you can do and things you have to do and so on.

A third characteristic is that they can't afford much in the way of professional services. They're not like big units of business. They don't have human resources managers. They don't have site engineers. They don't have environmental engineers. They don't have government relations departments, for goodness' sake. They tend to do it all; we'll show you some data on that. Finally, they have very little cash for professional services because when you buy some of those knowledge areas on an hourly basis, they're really expensive.

Given the demographics and dynamics, we decided, "Let's do a national survey of regulation." We did this at the end of 2005. It's a landmark study. You have a copy of it in your kit. The personal impacts—I'm only giving you the icing on the cake here—that are contained in that study: 79% of owners of firms with zero to four employees and 67% of owners of firms with five to 19 handle regulation themselves. As the firms grow larger in our sample size, the lower and lower that gets. But while the firm is small, the owner is heavily involved. Sixty-seven per cent of all of our members, not just these very small ones, report that it adds significant stress to their lives; 62% say it takes significant time away from family and friends and 52% say they spend a significant amount of time on regulation outside of working hours. That includes filling out GST returns and PST returns and source deductions and all of the paperwork related to all the tax and regulatory systems.

#### 1700

As far as business impacts go, the financial burden falls heaviest on small firms. It amounts to \$8,239 a year for small firms. That compares to \$6,835, from a study of all the OECD countries. This information comes from an OECD study and from our own peer-reviewed study of regulatory costs.

Other business impacts: 54% say that it impedes their ability to compete with larger firms. That's pretty understandable, given those per-employee costs. And 63% say that it significantly reduces their business's productivity.

As a measure of opportunity costs, we asked them, "What would you do if the regulatory costs to your firm were reduced?" Fifty-four per cent said that they would invest in equipment/expansion, 46% would pay down debt, and 28% would hire more employees.

We asked them, "What are the most burdensome regulations you face federally, provincially and municipally?" All of that is in the complete report you have. But provincially: workers' compensation, 60%; PST, 51%; employment standards, 37%; and property assessment, 35%.

The backgrounder to the act and the ministerial statement put a heavy emphasis on scofflaws and firms trying to get a commercial advantage by ignoring regulation. Certainly, there are human beings like this in every field of endeavour. But to be blunt, we believe that govern-

ments have to clean up their own regulatory backyard before they apply such things as the Regulatory Modernization Act to small business. We think government itself is the cause of much of the lawbreaking, and I hope you have the patience to hear us out. Let me give you some examples. I call these "tales from the regulatory trenches."

Take the employment standards poster. The Employment Standards Act requires employers to display a Ministry of Labour poster summarizing employee rights and responsibilities. It added a new sentence in mid-2006 and issued a press release which had no media pickup. Sixty days later, ESA inspectors began issuing \$350 tickets if employers had not replaced version two with the new version three. The lesson here is that in most cases, little or no attempt was made to communicate the existence of a new or changed regulation.

For that reason, we say that the Regulatory Modernization Act is premature. Think about it, ladies and gentlemen: If this change was very, very important, wouldn't government seek to communicate it, publicize it, make sure everybody knew about it? We've got a cynical term for this sort of thing: It's "government pretending to care." "Some interest group wanted that change and we said yes to them, and we'll find the poor devil that happens to get a ministry inspector on his or her doorstep." But really, are we serious when we don't communicate it and publicize it?

This one, if anything, is slightly worse: "60-Hour Work Week Ends Today." This was the title of a ministry news release from March 1, 2005. There was excellent media pickup because there'd been a series of news releases prior to this announcing that it was coming. The title was misleading in the extreme. I called the Ministry of Labour employment standards hotline the next day, identified who I was, and said, quite legitimately, "We're going to get calls from members on this. We want to know the ropes." We did get calls. The response was accurate: It said, "No, no, no. The 60-hour workweek wasn't eliminated. It's not about that at all. The real change is for employers who want to work between 40 and 59, or just below 60. Now they've got a lot of paperwork to do. They've got to get permission. Those are the ones who are affected." Can you imagine a more damaging way of communicating than misleading people? We wrote to the minister; the letter's in your kit. That's one part of the story.

The other part of the story is that if somebody was obsessive and said, "Even though I don't work a 60-hour week ever, I'm going to find out what all this is about," they would have had to absorb 58 pages of explanatory material, the size of a small book, for this change. You know, in the universe of government regulation, this is a small thing. But 58 pages? A lot of regulation is like this. It's beyond the ability of small people to hear about it and then, when you step into that kind of a system, you just don't have the time to do it.

Third example: Employment Standards Act. I was a member of an employment standards task force. There



were a lot of stakeholders. The parliamentary assistant to the Minister of Labour was there. To that gentleman's great credit, he kept asking everybody who made presentations, trying to get the answer to the question: "Are these people who are not abiding by the Employment Standards Act consciously not doing it because they don't want to, or do they not know what their obligations are?"

Finally, we were having a presentation from a young lady who had been a part of a group of random audits, just a benchmark, what compliance was. He asked her: "Is most of the non-compliance purposeful, or is it because companies aren't aware of the rules?" She just burst out: "Oh no, no. They're glad to see us. They appreciate our help. Some of this stuff is complicated, like holiday pay, for example. They thank us for explaining it to them."

Now again, ladies and gentlemen, at this point in time, Ontario regulatory enforcement people across the board know that small businesses, for the most part, are making a genuine effort to comply, but that with all kinds of subjects like occupational health and safety and collecting the retail sales tax for government, and on and on and on, they just can't get it right. There's too much of it, and when you look at individual parts of it, it's horribly complicated.

Even though we've got a little extra time, I'm going to give you one more. This is from Occupational Health and Safety. You don't have it in your kit, but there are two ways to put up eavestroughing: Two men on a ladder cost \$700; two men on scaffolding, which is a lot more time-consuming, cost \$1,900. A few years ago, the Minister of Labour made that mandatory. A year later, I took the call. A CFIB member from London called us for advice. He said: "Look, I drive around all day, I see my competitors at work. Most of them are not using scaffolding. MOL isn't enforcing the rule. If I quote jobs at \$1,900, I won't get any more jobs; if I quote at \$700, I can feed my family but I'm breaking the law. What should I do?"

That's a real story from a member in London, Ontario. It's outrageous to pass a rule and not enforce it and to put a citizen who wants to be law-abiding in that kind of position. I had to tell him, sympathetically, that I certainly couldn't advise him to break the law, that really this was a question more appropriate for a rabbi or a priest than to a member services counsellor at CFIB, but I promised him I would keep that example front and centre every opportunity I had to lobby on the subject of regulation.

We want you to tread very, very carefully on this—not assume that because people aren't abiding, they're conscious lawbreakers. The total volume is beyond them when they're that small, and it's so complicated in some cases, you can't get it right.

The Regulatory Modernization Act: What does it do? Well, it brings together the enforcement of 85 statutes and almost 600 regulations. Can we really expect a small business owner to know all of this? Would we, in this room, have anybody who would know half of the 85

statutes by name, or 10% of the regulations by name, or 20%? It's just staggering. I can't imagine how many inches of paper it would involve in printing it all off and then getting interpretive material that the ministries have behind a lot of those regulations, and getting case law. It's just beyond belief.

1710

It allows ministries to share information. From experience, I can tell you we would consider that dangerous. It exposes people to threats. Most of your auditors, most of your inspectors, are decent, professional, well-qualified people. But as in any group of humans—like there are cheaters in business—there are a few bad apples in your workforce too, I can tell you, and those people will use this as a threat.

It authorizes ministries to form teams to target repeat violators. This, my friends, would be totally inappropriate unless we're dealing with a case where somebody is told by somebody in a ministry, "You're not doing this right. You've got to do thus or so," and they persist in not doing it and they persist in not doing it. If that's a definition of a repeat violator, our members would want you to get him or her. But if it's a failing in employment standards and occupational health and safety and a minor error in RST, that's a horse of a completely different colour, and this would be completely inappropriate.

It authorizes ministries to form teams to assist small business. This should be the only thing they can do, and having that in the backgrounder to the legislation is not enough. We're going to make a request of you that's more specific than that.

Finally, we're kind of wondering what people mean by publishing information about an organization's compliance record as a deterrent to repeat violations. How do you define "repeat"? We think it's highly prejudicial. In many small communities, the business's reputation is the owner's reputation. Do we publish all kinds of other misdeeds by individuals in this society? I don't think so—with very few exceptions. There are some exceptions, but very few, and they're very controversial.

So we're asking you, please don't put the cart before the horse. The Ontario government has made a modest start in reforming small business regulation. They've created a small business agency. They've put in a website for the autobody repair business to bring all the stuff that applies to it in one spot. They're working on a project for plastics. They've allocated some funds in this year's budget for regulatory reform. But look, the hard part is yet to begin: reducing the amount of small business regulation to an amount consistent with the small business capacity to cope and government's ability to communicate, supervise and enforce.

When you see the picture from our point of view—you can tell from some of those examples, and we've got lots more where they came from—government has exceeded its own ability to administer. This act is a Band-Aid on a symptom. It's the root cause of that symptom that's got to be attacked. The lesson is that applying this act to small firms now amounts to putting the cart before the horse.



What did our survey show that small businesses said they needed?

- simplify existing regulations: 81%;
- reduce the total number of regulations: 72%;
- clearly communicate and make business owners aware of new regulations: 58%;
- improve government customer service: 57%;
- provide examples of compliance; and
- make fewer changes to existing regulations.

What comes through there is the workload and the difficult time people have just even dealing with it. I didn't put the slide in, but one of the saddest tables that we got out of our survey was one where we asked our members, "To what extent, percentage-wise, do you think you're in compliance with everything that the federal government, the provincial government and your municipality expect of you?" They rated themselves very, very highly. They think they're in compliance. That's a reflection of their desire to be law-abiding citizens, but it's also a reflection of their ignorance of everything that's out there that they need to comply with.

They find that the way government tends to communicate is by an inspector, an auditor and a monetary penalty. I submit, ladies and gentlemen, that that's just a wrong way to communicate. If things are that important, you ought to make sure every single person knows about them.

So we're asking you today—we had this in our pre-budget submission; it was one of only two areas that we petitioned the provincial government on this year—to exempt SMEs from the Regulatory Modernization Act until substantial progress has been made. Until then, the government should do the following:

- Reduce the regulatory burden, as promised by Premier McGuinty; actually reduce it. Start with placing a moratorium on all new provincial legislation, regulation and municipal bylaws that would increase the burden on SMEs.

- Establish, as the federal government has done and as several provinces have done, firm regulatory reduction targets and an implementation timetable based on an initial inventory of the current regulatory load.

I really plead with you to be fair. If we go back to that one slide, our members, through us and through other organizations, have been pleading for years for government to help them with this. Please don't bring in a punitive enforcement regime to deal with the problems that afflict them.

Thanks very much.

**The Acting Chair:** Thank you very much. We're left with five minutes. Mr. Kormos had to leave on an urgent issue, so we are going to split in two the five minutes, which will be two and a half minutes per party.

**Mr. Racco:** I certainly appreciated the comments, and I want to make clear that there will be no changes to the laws that apply to businesses through Bill 69. The bill does not create any additional regulatory responsibilities on a business; there are no additional ones. This bill means improved communications; improved communi-

cations means less duplication—which is what your concern was; and less duplication means less headaches for the business community. The bill does that.

I know you have a member sitting on the SBAO, of which I am a member, and the Chair is the chair of that committee. We have done lots of work to in fact achieve what you are asking us to, in particular in the small business section. The chairman, M. Lalonde, has been working hard with a number of PAs in that committee to make major changes because the business community has been asking us to do that. Quite frankly, we see that you are correct, and we are making changes. We are quite proud of the achievement that we have achieved. I believe that next week we are going again in Ontario to speak to people like yourself in small and larger communities so that we can get directly from your members basically what it is that they want us to change. We are responding.

Quite frankly, this bill doesn't add any more red tape. In fact, it is going to modernize what your membership has already done within their industry, within their business.

I want to say that I am certainly pleased with your comment when you feel that—the ministry authorizes teams to assist small businesses. Certainly we see merits in that, and that you agree with us will make us feel even more comfortable on that.

I wanted to ask you a question, if I could, before we go ahead with any other comments. My question to you is, what kind of impact does non-compliance with Ontario laws have on the responsible businesses within your industry?

**Mr. Charette:** I tried to outline that; I'm sorry. Our members want compliance, but the message is that this is to catch bad apples, and there is too much regulation now. The SBAO is a fine organization, and some of the other initiatives are fine. It hasn't gone 1% of the way down the road that we need to travel. It's premature to send—can you imagine teams coming in where a person has three employees, and they come at him from every different angle? Why would you need to send a team in, if it's that simple? There is too much regulation, with respect, Mr. Racco, and it is inappropriate to apply this to small businesses. It's not a help program, if you read the ministerial statement; it's an enforcement program.

**Mr. Racco:** I hear you.

**The Acting Chair:** Thank you. That is it. Time is up, Mr. Racco. I would move on to Mr. Martiniuk of the official opposition.

1720

**Mr. Martiniuk:** Thank you very much for your presentation. There's very little doubt that this bill does not apply new regulations to business. However, what it does do is expand the enforcement. This bill is also subject to great abuse, because it gives some terrifying powers that inspectors did not have in the past.

However, in your budget presentation you suggested that possibly this bill would exempt small business. Because it does not apply new regulation and all it does is increase the powers of the enforcement mechanism,



have you thought through how a mechanism would exempt small business in particular? I just can't think of any right now.

**Mr. Charette:** Then you just would go into a small business with these teams and share information between ministries and publish records of performance.

**Mr. Martiniuk:** Just exempt it from the whole bill?

**Mr. Charette:** From that enforcement.

Take a look at our regulatory study that's in your binder. There's no human being with a business the size of five, 10, 15, 20 employees who could know all that's expected by all three levels of government, and nobody in government tries to even guess how much workload is out there. Please give it some second thought.

**Mr. Martiniuk:** In applying this particular request, what do you define as a small business? Do you define it by the number of employees? If so, how many?

**Mr. Chera:** Yes. Let me just say that, quite frankly, I think we're missing the point of the arguments that we're making, which is that what this really does is propose to rev up enforcement. That was the key purpose of this legislation. When the minister announced that he was going to bring us in, he said, "We're going to rev up enforcement of 85 statutes and 600 regulations." Our point to you is: How many businesses out there do you know of that know all 600-plus regulations that are on the books right now?

The government has made a commitment to sit down with the small business sector to address the concerns of, "How do we help small businesses comply with regulations?" That's not what this bill does. What this bill does is take a punitive approach: "Let's send out these teams of inspectors and go after businesses that may not know of the regulations that have been imposed, and then say, 'We got you.'" Our recommendation to you is that you need to take a step back; that you need to first address the issue of helping small businesses to comply with the regulations that are currently on the books, because that's not happening today.

Yes, the Small Business Agency is doing a lot of work in terms of trying to address that. We think it should be given the opportunity to finish that work, so at least you get the tools that are out there that are necessary for small businesses to comply with the regulations before you

start sending the inspectors after them. That part, I think—

**Mr. Martiniuk:** This is not my bill, to start with, and that was not the question I asked. I asked a very simple question. We want to exempt, if that's possible—let big business and big government fight it out; that's a fair battle. We want to exempt small businesses. What's a small business? How do you define it?

**Mr. Chera:** I think 20 employees or less, Tom?

**Mr. Charette:** Twenty to 50; 50 is very common—

**Mr. Martiniuk:** Under 50 employees; would that be a reasonable—

**Mr. Charette:** Yes.

**Mr. Martiniuk:** Okay. That's all I want to know.

**Mr. Charette:** The government definition is 500, but in our view, that's—

**Mr. Martiniuk:** Yes. That would be a larger business, in my eyes.

**Mr. Charette:** That's what their definition is.

**Mr. Martiniuk:** Thank you very much.

**The Acting Chair:** I just wanted to say that Judith Andrew from CFIB is part of the SBAO, and the information that she keeps giving us really helps the procedures of the SBAO. We've made a lot of progress in the last year. At the meeting we had at the beginning of 2007, we made a lot of improvements. It's coming.

**Mr. Charette:** Thank you very much.

**Mr. Chera:** Mr. Chair, no one disagrees with that. I think our only point is that with this legislation, all of the work that is being done by the SBAO is going to be put aside. I think that is our major worry here. The government is on the right track in terms of helping to reduce the burden, but this legislation is really in conflict with the work that you folks are doing through the SBAO.

**The Acting Chair:** We appreciate your comments too, and any help that you give us. Thank you very much again for your presentation.

Just before we adjourn, I'd like to say that the deadline for amendments is tomorrow at 4 o'clock. March 27 at 4 o'clock is the deadline for amendments to be submitted to the secretary.

This will conclude our public hearings today. I call the adjournment of this meeting. Thank you.

*The committee adjourned at 1725.*









## CONTENTS

Monday 26 March 2007

<b>Election of Acting Chair .....</b>	<b>G-1043</b>
<b>Subcommittee report.....</b>	<b>G-1043</b>
<b>Regulatory Modernization Act, 2007, Bill 69, <i>Mr. Peters</i> / <b>Loi de 2007 sur la modernisation de la réglementation</b>, projet de loi 69, <i>M. Peters</i>.....</b>	<b>G-1043</b>
<b>Ontario Public Service Employees Union .....</b>	<b>G-1043</b>
Ms. Leah Casselman; Mr. Don Ford	
<b>Canadian Manufacturers and Exporters.....</b>	<b>G-1048</b>
Mr. Ian Howcroft; Mr. Paul Clipsham	
<b>Canadian Federation of Independent Business .....</b>	<b>G-1052</b>
Mr. Satinder Chera; Mr. Tom Charette	

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### **Chair / Président**

Mr. Kevin Daniel Flynn (Oakville L)

#### **Vice-Chair / Vice-Président**

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)  
Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)  
Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)  
    Mr. Kevin Daniel Flynn (Oakville L)  
    Mr. Jerry J. Ouellette (Oshawa PC)  
Mr. Tim Peterson (Mississauga South / Mississauga-Sud L)  
    Mr. Lou Rinaldi (Northumberland L)  
    Mr. Peter Tabuns (Toronto–Danforth ND)  
Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### **Substitutions / Membres remplaçants**

Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)  
Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell L)  
    Mr. Gerry Martiniuk (Cambridge PC)  
    Mr. Mario G. Racco (Thornhill L)

#### **Also taking part / Autres participants et participantes**

Mr. John Stager, assistant deputy minister, II&E business transformation,  
Inspections, Investigations and Enforcement Secretariat, Ministry of Labour

#### **Clerk / Greffière**

Ms. Susan Sourial

#### **Staff / Personnel**

Mr. Ralph Armstrong, legislative counsel;  
Mr. Philip Kaye, research officer,  
Research and Information Services

G-45



G-45

ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 28 March 2007

# Journal des débats (Hansard)

Mercredi 28 mars 2007

**Standing committee on  
general government**

Regulatory  
Modernization Act, 2007

**Comité permanent des  
affaires gouvernementales**

Loi de 2007 sur la modernisation  
de la réglementation



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 28 March 2007

Mercredi 28 mars 2007

*The committee met at 1530 in room 151.*REGULATORY  
MODERNIZATION ACT, 2007LOI DE 2007 SUR LA MODERNISATION  
DE LA RÉGLEMENTATION

Consideration of Bill 69, An Act to allow for information sharing about regulated organizations to improve efficiency in the administration and enforcement of regulatory legislation and to make consequential amendments to other Acts / Projet de loi 69, Loi permettant l'échange de renseignements sur les organismes réglementés afin de rendre plus efficaces l'application et l'exécution de la législation de nature réglementaire et apportant des modifications corrélatives à d'autres lois.

**The Chair (Mr. Kevin Daniel Flynn):** Ladies and gentlemen, if we can call to order. We're here today to deal with Bill 69, An Act to allow for information sharing about regulated organizations to improve efficiency in the administration and enforcement of regulatory legislation and to make consequential amendments to other Acts.

Mr. Martiniuk, you had something at the very start?

**Mr. Gerry Martiniuk (Cambridge):** Yes. I just want to apologize to the committee. I could not meet the deadline in regard to my amendments. We rose, if you recall, about 6 o'clock on Monday. My instructions were ready at 9 o'clock in the morning. On Tuesday, however, by the time I gave instructions to members of my staff, it was 12 o'clock and then that was delivered to legislative counsel probably at 1 or 2, which meant they had two hours in which to complete my instructions in regard to 10 amendments. They weren't terribly complicated; however, they took some thought. The duration of the time that we left for the filing of amendments was unrealistic in this case. I apologize because I know that makes it more difficult to seek instructions and consider those amendments, and I know members of all parties would want to consider the amendments in full. Being a member of the subcommittee, I set my own time limit, which I failed to meet, which is somewhat embarrassing to me.

I would like to know from legislative counsel a general rule as to the turnaround time for amendments in the counsel office. I know that's a difficult question because it depends on the circumstances. Maybe a range

would be handy, but what's the absolute minimum you would have to have, in your opinion?

**Mr. David Halporn:** It's hard to say. It really would depend on the complexity and number of the amendments you wanted to bring forward. If you could schedule a couple of days, at least, between the end of public hearings and the filing deadline, that would certainly help. The day after doesn't give us a lot of time. In future, if you were inclined to spread it out a little bit more, that would certainly help.

**Mr. Martiniuk:** Thank you.

**The Chair:** Mr. Kormos.

**Mr. Peter Kormos (Niagara Centre):** First, I want people to know that Mr. Martiniuk told me about these amendments and extended me that courtesy, and I appreciate that, to mitigate the fact that they were going to be a little later arriving than we had wished. Of course, an amendment can be moved at any time, notwithstanding any advisory time limits that are put.

As for legislative counsel, David Halporn included, they're like the alchemists of the Middle Ages. They're like Houdini of the last century. They somehow manage to turn sometimes confusing and obtuse instructions into intelligent legislation in remarkably short periods of time.

There's a story about Robert Johnson, the blues player, selling his soul to the devil at the crossroads. Sometimes I wonder what legislative counsel did to give them that unique talent to produce well-drafted amendments, or bills, for that matter, in such short order. I want to thank legislative counsel and assistants, Mr. Halporn, for their inevitable patience with us members and for their incredible skill. I want you to know that we should be concerned about the retention of those people because our salary schedule for legislative counsel is certainly not competitive with what they'd be making out there in the private sector. One of the things BOIE should perhaps be addressing is measures to make sure that we retain these skilled people.

**Mr. Halporn:** Thank you. I'll forward those comments to my boss.

**Mr. Kormos:** I trust you will.

**The Chair:** What Mr. Kormos didn't note was that Robert Johnson allegedly was poisoned by an angry husband. Isn't that how he died?

**Mr. Kormos:** That's how he died. I'm talking about where he got his talent. Look, Mr. Halporn's on his own in that regard.



**The Chair:** Let's get going, then, today. You'll find attached to your package anything you have asked of legislative research, any information, and any submissions that may have come in since the time we met last.

**Mr. Kormos:** Once again, staff from the ministry prepared an excellent briefing book, including a clause-by-clause analysis which is going to make this afternoon proceed much more smoothly. I applaud them and I encourage other ministries to do the same in other circumstances, especially if you've got those really complex bills of 150 pages. There are no real secrets around here. It's not as if they're giving away anything that they're not going to be forced to say anyway.

**Mr. Mario G. Racco (Thornhill):** I appreciate these comments, Mr. Chairman.

**The Chair:** Everybody's getting along here really well. Let's get started, then. Are there any comments, questions or amendments to any section of the bill, and if so, to what section?

Starting with section 1, I don't have any amendments before me. Shall section 1 carry? Carried.

Moving on to section 2, we have three amendments before us, all of them from the Progressive Conservative Party.

**Mr. Martiniuk:** I move that section 2 of the bill be amended by adding the following subsection:

"(2) Nothing in this act applies with respect to an organization that employs 200 or fewer people, and without limiting the generality of the foregoing;

"(a) an authorization made under sections 7 or 13 does not authorize the collection, use or disclosure of information respecting an organization with 200 or fewer employees;

"(b) observations may not be recorded and disclosed under section 9 with respect to an organization with 200 or fewer employees; and

"(c) section 10 does not authorize the publication of information with respect to an organization with 200 or fewer employees."

Very simply, we heard from the CFIB that they felt the act would impose an impossible—not just onerous—burden to small business. There was some discussion as to what a small business constituted, and I put forth three amendments: the first one that I just read, dealing with defining small business in effect as under 200, and then the other two which will follow if this one is defeated. They would be withdrawn, of course, if this one passed. The other two deal with small business defined for fewer employees.

**Mr. Kormos:** On a point of order, Mr. Chair: I understand Mr. Martiniuk's intent. With respect, perhaps Mr. Martiniuk should be invited to read his version 3 first because, if perchance the committee accepts this amendment defining small business as under 200 people—his more conservative threshold of 100 or 50—he would have to move an amendment to defeat an amendment that was successful. Perhaps, appreciating the difficulty the clerk had, the clerk might have ordered these with number 3 being first—that's his lowest threshold, 50—

because it seems his intent would be to want to restrict the application of the bill to the largest number of businesses, which means he would be starting with 50. If that were unacceptable. I think he would want to move to 100.

**The Chair:** Thank you. Let me consult with the clerk, Mr. Kormos.

**Mr. Martiniuk:** I don't know about that. I would have thought just the opposite—I like the way they're ordered here—in the sense that I would exempt the greater number of businesses with 100—or 200 employees or less. That would be to include the greatest number of businesses, and as you go down in the number of employees, it would decrease because you're not including the larger businesses.

**Mr. Kormos:** I was just trying to be helpful.

**The Chair:** We'll take that as helpful advice as opposed to a point of order.

**Mr. Kormos:** I put on my right-wing hat for just a minute. It didn't fit and it doesn't look very attractive. I'll not wear it again.

**The Chair:** We have an amendment on the floor now that was moved by Mr. Martiniuk. Are there further speakers?

**Mr. Kormos:** I understand the intent. Once again, it seems to me that the CFIB—and this appears to be in response to CFIB, perhaps amongst other comments that Mr. Martiniuk has received—came here with effectively an anti-regulation message, and I understand the message. They would argue that the smallest businesses, in other words businesses with the fewest number of employees, are least capable of affording regulatory regimes. That is why I thought Mr. Martiniuk would have done these in the other order, starting by trying to exclude businesses with 50 or less, which would be more attractive to CFIB, and less attractive to the government, I presume. I regret that I can't support it.

1540

You see, that's one of the problems at Queen's Park here, and it happens at other levels of government too. We think small business is an operation with 60 non-union employees, and look at the data CFIB gave us: Over 75% of businesses have under five employees, and the vast majority of those, I will just predict anecdotally, are mom-and-poppers. I mean, I grew up in that kind of culture, where the business was literally the family business. If you could hire an employee or two from time to time, you did. Increasingly, the sort of businesses we see, service businesses, are self-employed tradespeople—electricians, plumbers, what have you—where there is one employee, and that's the gal or the guy who works at the job. And I have sympathy for the bona fide small business. I wish there were an amendment that excluded businesses under five, for instance. I have real sympathy for them, because they aren't operating on this level. They don't have an HR director; they don't have these kinds of resources.

I regret that I can't—I don't regret because I'm opposing it; it's because I like Mr. Martiniuk and I would want



to support his proposal. But this is a typical sort of CFIB—what was his name? Frank Sheehan. This is the Sheehan approach: “Oh yeah, if you’re a small business employing under 200”—I’m sorry. Down where I come from now, where Union Carbide is gone, Atlas Steel is gone, we’d thank our lucky stars for a small business employing 200 people. Down where I come from now, increasingly it is little shops of 10 or 15 people, and I suspect that’s the case in a whole lot of other parts of Ontario, too, because we’re talking about occupational health and safety here, environmental safety, amongst other things.

Again, because of my regard for Mr. Martiniuk, I express regret that I can’t support it, but I enthusiastically oppose it because I don’t agree with the proposition.

**The Chair:** Thank you, Mr. Kormos. Are there any further speakers to the amendment? Mr. Racco.

**Mr. Racco:** Let me agree with Mr. Kormos and also say that this motion would only benefit big companies, which certainly is not what we are trying to do here. We have met, as I said Monday, with a number of small business owners, and they have told us that they need to reduce duplication, and also they have to be able to talk to each other. This bill would enable us to reduce the duplication in compliance activities and look at new approaches to small business compliance.

This bill would also allow us to continue with our success of the small business pilot of which Monday’s Chairman is the chair, and we talked about that also Monday. This bill is good for business, whether they are small, medium or large. That’s why we cannot support this amendment.

**The Chair:** Any further speakers?

Shall the amendment carry?

**Mr. Martiniuk:** Could I have a recorded vote, please?

**The Chair:** A recorded vote? Absolutely.

#### Ayes

Martiniuk.

#### Nays

Dhillon, Kormos, McMeekin, Racco, Rinaldi, Van Bommel.

**The Chair:** That amendment loses.

Moving on to amendment number 2, it’s another Conservative one. Mr. Martiniuk.

**Mr. Martiniuk:** I move that section 2 of the bill be amended by adding the following subsection:

“Same

“(2) Nothing in this act applies with respect to an organization that employs 100 or fewer people and, without limiting the generality of the foregoing,

“(a) an authorization made under section 7 or 13 does not authorize the collection, use or disclosure of infor-

mation respecting an organization with 100 or fewer employees;

“(b) observations may not be recorded and disclosed under section 9 with respect to an organization with 100 or fewer employees; and

“(c) section 10 does not authorize the publication of information with respect to an organization with 100 or fewer employees.”

**The Chair:** Thank you, Mr. Martiniuk. Speaking to the amendment?

**Mr. Martiniuk:** I’d just reiterate what I’ve said before. In our society, it seems that large organizations rule the roost, and we forget about the smaller organizations that are finding it increasingly more difficult—whether they’re unionized or not is irrelevant, but especially in our industrial bases, we are losing jobs, and regulations are necessary. The safety and health of our employees are essential and are to be safeguarded. However, when you get into superregulation, and this bill could fall within that class, I become concerned that smaller businesses being treated as big businesses are finding it increasingly more difficult, and that is the intent of my amendments.

**Mr. Kormos:** Again, I don’t take delight in opposing the amendment of Mr. Martiniuk, but it seems to me that the simple issue of regulation, which means inspection, which means applying standards and ensuring those standards are met—look, if there are stupid standards, they should be addressed. That’s not what this bill speaks to. If there is capricious enforcement of standards, that should be dealt with. But that’s not what this bill addresses. There are going to be areas where I’m going to find myself, I am sure, in agreement with Mr. Martiniuk, but OPSEU was very clear that it supported the proposition of being able to investigate workplaces and other places, businesses, for any number of those things that we regulate and control, presumably—not presumably; in fact, we regulate and control them—in the interest of public safety and the safety of the workers and the safety of the vicinity.

Look, the firecracker factory down in Port Robinson that killed young Robyn Lafleur approximately six years ago now had under 100 employees. It hadn’t had, unfortunately, a health and safety inspection in some significant period of time, and when they were there, they were perfunctory ones. Clean Harbors, the explosion in Thorold just over the course of the last couple of weeks where, amongst other things, containers of lithium batteries, we are told, exploded and were in flames, leaving the neighbourhood in great fear—fortunately, no workers were injured, but the neighbourhood was evacuated. This was a small operation; quite frankly, as I recall, less than 50 employees. So I understand what Mr. Martiniuk is driving at and I understand that he’s basically speaking to the principle of trying to give some support to bona fide small businesses. Well, I say that the support should be to those real small businesses, the mom-and-pop operations, and also the support shouldn’t be by way of diminished standards, but assistance in how



they attain those standards, for instance. If it costs money to reach a particular standard that's a bona fide health and safety standard, small businesses—real small businesses, the little mom-and-poppers—should be given help attaining the expectation level that a reasonable regulation provides them. So I'm compelled to oppose this amendment as well.

**The Chair:** Thank you. Mr. Racco?

**Mr. Racco:** The same argument I made on the first motion: We can't support it. Without repeating the same points, let me just say that this motion would only benefit big businesses and so it cannot be supported.

**The Chair:** All those in favour of the amendment?

**Mr. Martiniuk:** Recorded vote, please.

**The Chair:** Recorded vote.

#### Ayes

Martiniuk.

#### Nays

Dhillon, Kormos, McMeekin, Racco, Rinaldi, Van Bommel.

**The Chair:** That amendment loses.

Moving on to the next amendment, which is another PC motion.

**Mr. Martiniuk:** To show my respect for the comments of Mr. Kormos, I will amend this as I read it.

I move that section 2 of the bill be amended by adding the following subsection:

"Same

"(2) Nothing in this act applies with respect to an organization that employs five or fewer people and, without limiting the generality of the foregoing,

"(a) an authorization made under section 7 or 13 does not authorize the collection, use or disclosure of information respecting an organization with five or fewer employees;

"(b) observations may not be recorded and disclosed under section 9 with respect to an organization with five or fewer employees; and

"(c) section 10 does not authorize the publication of information with respect to an organization with five or fewer employees."

I move that motion to exempt not large numbers of small businesses but, in fact, as my friend and colleague Mr. Kormos points out, our mom-and-pop businesses. I think I'm restricting my amendment to those organizations.

1550

**The Chair:** Clearly understood. Mr. Kormos.

**Mr. Kormos:** From my perspective, Mr. Martiniuk has the threshold right in terms of the number of employees. However, he's suggesting that sections 7 and 13 shouldn't apply, and that means requiring information like the legal name of an organization, and the name under which an organization operates if it is not the legal

name. These are the things that 7 and 13 allow you to do: to require information that's pursuant to section 4. We're going to get to paragraph 7 of that section, because Mr. Martiniuk legitimately has concerns about that, and I supported those concerns yesterday.

It seems to me that most but for, at least at first glance, section 7—because it also permits disclosure; not just the acquisition of the information but the disclosure of it. It seems to me that all but for section 7 are not, in and of themselves, onerous for even the smallest of businesses. This isn't about compliance with, let's say, health and safety standards, compliance with environmental standards, compliance with Ag and Food standards in the case of food processing. It's about, very simply, information acquired under section 4 and those restrictive points.

So I'm grateful, because we're getting now to understand what small business really is, and I say that, yes, the five-and-under category is what small business really, really is—not to neglect somebody who's got six employees. Still, it's in reference to what they're being excluded from participating in, and I think amendments to section 4, which are coming up and which I anticipate supporting, are a far more appropriate way of addressing that. Therefore, I cannot support this amendment, although I congratulate Mr. Martiniuk for his creativity.

**The Chair:** Thank you. Any speakers from the government side?

**Mr. Racco:** Yes. Certainly changing the number to five makes it a little more interesting, but we cannot support it, for generally the same reasoning I made on the first amendment.

**The Chair:** Any further speakers?

**Mr. Martiniuk:** I'm just trying to be amiable, Mr. Chairman, and not quite succeeding—but close.

**The Chair:** You are. Is this your final offer?

You would like a recorded vote on this as well, Mr. Martiniuk?

**Mr. Martiniuk:** Yes, please.

#### Ayes

Martiniuk.

#### Nays

Dhillon, Kormos, McMeekin, Racco, Rinaldi, Van Bommel.

**The Chair:** That amendment loses.

Those are all the amendments we have before us on section 2. Shall section 2 carry? Those opposed?

Section 2 is carried.

Moving on to section 3, I have no amendments before me. Shall section 3 carry? Carried.

**The Chair:** Moving on to section 4, I have two amendments before me, starting with those that you would have on page 4.



**Mr. Martiniuk:** I move that paragraph 7 of section 4 be struck out.

This amendment would do away with what I consider a most odious provision of this bill, and that is complaints. I can see great sense in convictions under the same act and similar acts being admissible for various purposes, but complaints are, in effect, gossip. There is nothing in this act that requires such complaints to be validated as bona fide or made in good faith, so they could be malicious, to start with, and yet they would still carry the same force and effect as if they were bona fide.

Secondly, there's nothing in this act to require validation of any of the complaints. I think this sets a very dangerous precedent. No matter what our good intentions are, we cannot regulate on the basis of rumours and gossip. I'm sure we as a civilization are past that, and I therefore strongly ask for your support to remove this most odious provision.

**The Chair:** Thank you, Mr. Martiniuk. Mr. Kormos?

**Mr. Kormos:** I am in support of this amendment. We had some discussion around this yesterday. Look, the problem here is the disclosure part because it doesn't define disclosure to whom. There seemed to be a suggestion that disclosure could be to the general public; the disclosure could be by way of a website. When you read 13 and 7 of the bill—those are the two operative sections when it comes to utilizing section 4—this is a ministerial authorization. Without any control in terms of especially disclosure—I have no qualms about the collection of that information, but the disclosure of it, without specifying to whom—because it doesn't seem that the argument is to be made that this is all part of the multi-ministerial exercise. Then, the disclosure part could be made very clear in that regard and disclosure to other ministries or other regulatory bodies that may have an interest. But that's not what it says and, as I say, we're left with the impression that it could even be, for instance, a website.

Mind you, there's an amendment coming up that deals with paragraph 9 and that warrants a different discussion, but when you take a look at section 4—I've already gone through most of the list quickly—this is the sort of stuff that, yes, I believe should be, in the event that the minister wants it made available to the public for a good reason—a legal name of an organization, a name under which it operates, telephone, fax number etc.—of course. But this is very, very frightening.

You mentioned yesterday, again, you know, Mr. Racco—and this came up when Mr. Martiniuk made his initial comments—the parliamentary process, which successive governments have responded to with rule changes that have been designed to accelerate the process. I'm not sure it's supposed to be a speedy process. I'm not sure that it isn't designed when you have concepts like first, second and third reading, literally designed to be a slower, more thoughtful process, perhaps at times ponderous. I'm worried here that we're rushing through this. We had the assistance of ministry staff yesterday, and I don't quarrel with anything they said, but this is troubling.

Take a look at some scenarios, and let's take a look at some of the small operations I'm familiar with. I'm familiar with small one- or two-person shops that will, for instance, get a contract out from a foundry literally to drill holes in hooks. It's labour-intensive, you're standing there at a drill press, you've got a little jig where you slide the hook in, but it's one at a time. It drives you crazy, doing the work. So here's a small operator who bids on local contracts for that type of contracting-out work and a complaint—because you see, a larger industry contracting with them is going to do due diligence. One could understand why they wouldn't want to engage in a business that, for instance, has problems with health and safety issues or environmental issues. They don't want to be drawn into even the public relations quagmire that that would create.

This is very, very scary. Does this mean that a complaint that is unsubstantiated, unresolved—look, if it's a conviction, God bless; no hesitation. We're going to talk about paragraph 9 in a minute. If it's a conviction, God bless. But a complaint that's unresolved—yikes. Again, it appears that the party has little remedy. What do they do, sue? They can't sue because you've got the section that gives anybody operating in good faith under the act immunity, right? It's strange stuff. I understand why you'd want to collect complaints. If you wanted to publish complaints, for instance, sort of statistically—how many complaints in Niagara were there around environmental issues?—feel free to publish it. If it helps to give regulators, bureaucrats a sense of where they have to put in more inspectors, where there are problems, if it helps identify hot spots in the province, feel free. But this suggests that a complaint against Mario Racco's fabrication shop, which he owns himself and for which maybe he hires a couple students from time to time when the job gets big enough, is going to be somehow not only collected but conceivably disclosed, because there are no controls that I'm aware of on the disclosure. That's a very unpalatable situation to be in. I don't know.

1600

Unless and until somebody can come up with something better—and this act could be amended later down the road—I say that the wise thing to do now is to pull paragraph 7, as Mr. Martiniuk suggests. If there has to be some tinkering down the road dealing with collection and so on, do it. But it seems to me that if there are complaints with collection, complaints are being made to ministry bodies, right? What's going on here? So the operative part of this paragraph isn't the collecting the data part, it's disclosing it. What do you think of that conclusion? Because the ministry has the data already. Hmm, that's peculiar. So the real impact of paragraph 7 of section 4 is to permit the disclosure? Hmm, interesting stuff. I'd like to hear what the PA has to say.

**Mr. Racco:** With pleasure. I think it's a fair question. The only straight answer is that the disclosure is only for ministries or designated authorities. That should answer your question.

We certainly have heard from stakeholders, not on Monday but prior to that, and we understand your con-



cern about information sharing. We have also included safeguards in the bill to ensure the lawful sharing of information among ministries and other regulators of provincial laws. For example, prior to any information sharing taking place, the legislation must be designated by the Lieutenant Governor in Council, and any person who shares the information must be authorized by the minister responsible for that legislation.

In addition, the bill would not open the types of information that government can currently collect. This means that the ministry could only share information that was originally collected under the statutory authority of designated legislation and that is already in the government's possession. Finally, we have consulted with the Office of the Information and Privacy Commissioner, and that office is comfortable with the approach we are taking.

Therefore, we cannot support that motion. I think Mr. Kormos's concerns have surely been addressed.

**The Chair:** Any further speakers? Mr. Martiniuk.

**Mr. Martiniuk:** I would like to point out to the committee that in section 4 of the preamble, we're not complaining about the collection and use of the complaint; my concern is with the disclosure. What this act does, strangely enough, is permit individuals to make slanderous and libellous statements to the public—that's under disclosure—and they are protected on top of it. So they can take information that, if made by a third party, they would be subject to damages as a result of slander or libel, but because it is made pursuant to this section—and you'll recall that individuals acting on this section are exempt; they cannot be sued. So here we have a government advocating use of statements that may in fact be libellous or slanderous, but they take no account of that, and they are authorizing the disclosure of those statements. I don't think that's a position that this government, or, for that matter, the people of Ontario, would like to see in legislation.

**Mr. Kormos:** I don't want to prolong this, but please—and I ask the parliamentary assistant to pay close attention. Take a look at section 5. My goodness. I'm sorry, I respectfully disagree. Paragraph 8:

"The following are purposes for which information may be collected ...

"8. To make the following available to the public:

"i. the types of information described in paragraphs" 5 through 10: paragraphs 5, 6, 7, 8, 9 and 10. So you see, Mr. Martiniuk, this isn't just about interministerial use.

I'll tell you what, sir: If the government amends paragraph 8 of section 5 to delete paragraph 7 from the types of information described in paragraphs 5 to 10; in other words, 5, 6—well, Mr. Martiniuk's going to talk about paragraph 9, but I have no qualms about convictions being made available to the public—8, 9 and 10, then you've addressed the issue. But your own legislation says that the purpose, amongst other things, of collecting information—to wit, complaints—is for the purpose of making it available to the public. The bill specifically says that. Now, I could have a misprint. I

could've gotten somewhere an inaccurate copy of the bill. Somebody could've slipped this into my file folder late last night in my office after I had left for the day, but I don't think so. I'm going to read it again:

"8. To make the following available to the public:

"i. the types of information described in paragraphs 5 to 10 of section 4...."

We're dealing with section 4, and 7 comes before 10 and after 5, at least down where I come from. So there's a problem here.

We have no interest in delaying this legislation. We expect that this bill's going to get third reading before we rise. It's not going to be the subject matter of lengthy debate, mostly because my caucus colleagues are more than eager to let me have the debate time on it. I might have to arm-wrestle Shelley Martel—she'll probably want to get in on it—but for the life of me I can't see Rosario Marchese debating this one at length.

But I'll tell you what, with all due respect—because I hear what you have to say, and of course I take you at your word. If we can hold down these sections, because you can address the issue by amending section 5—I don't know if Mr. Martiniuk agrees with me in that regard, because I've got a feeling the government's going to vote down Mr. Martiniuk's amendment; fair enough. But if you can hold down section 5 with the point of view of the government bringing in an amendment to delete 7 from disclosure to the public, I can't for the life of me think why you would want to disclose information about complaints as compared to convictions. Convictions: I can buy that. But complaints, without even qualifying it? Because it could be complaints that haven't been investigated yet. It could be complaints that have been resolved, such that no charges were laid. It could be frivolous complaints, and those happen; they happen for any number of reasons, good and bad.

I would make a commitment that we could come back to this, the House leaders will agree, I hope—I can commit, on my behalf, to come back and address section 5. But this is the problem: If you want to ram this through with this—because I think you're trying to be fair in terms of how you want this bill to proceed. But I think this is a little stumbling block here. We're going to try to wrap up the clause-by-clause today; I have no qualms about saying that. The balance of stuff is far less contentious. If you want to take five minutes—if five minutes will be helpful—feel free.

**Mr. Racco:** If I may, any publication to the public must be in compliance with section 10, Mr. Kormos. Would that satisfy you?

**Mr. Kormos:** I'm sorry?

**Mr. Racco:** Anything that is going to be printed for public use, must be in compliance with section 10.

**Mr. Kormos:** Chair, if I may: "The following are purposes for which information may be collected, used and disclosed in accordance with an authorization made under section 7 or 13...." Then there are nine paragraphs, nine purposes. The only one of those purposes that makes any reference to the public is paragraph 8:



"To make the following available to the public:

"i. the types of information described in paragraphs 5 to 10 of section 4...."

Section 10 in the bill is a regulation-making section. With all due respect, it has no impact, it seems to me, on section 5.

1610

**Mr. Racco:** Certainly, Mr. Kormos, if it is not clear, we can ask legal staff to clarify this issue. I would suggest Mr. Stager is probably the best person to clarify. Would that be okay with you, Mr. Kormos?

**Mr. Kormos:** I'm not going to belabour the point. If the government is going to proceed with it, then, we've made our points. But I'd appreciate hearing—if there is some way of mitigating the concerns, feel free. Let's do it.

**Mr. Racco:** That's the intent, Mr. Kormos.

**The Chair:** If you'd identify yourself for Hansard first, before your comments, that would be great.

**Mr. John Stager:** My name is John Stager. I'm the assistant deputy minister of the II&E secretariat with the Ministry of Labour.

In the way of an explanation about the complaint area within the proposed bill, it says in the bill "information about complaints." That's a fairly broad category about complaints, so it's not just about a complaint per se; it's about information related to complaints. That's an important context for us, because in the business of government it is important to be able to, first of all, understand what is happening in terms of a sequence of events; for example, a complaint from the public on a situation. That's the first stage of events that happen within government now. As a result of that complaint, we would take some subsequent action to follow up on the complaint. Typically, it would be either an inspection or it could be phone call or something else like that.

That then leads to a sequence of events—inspection; possibly some kind of action following the inspection—and ultimately, it may lead to some kind of public statement about something that happened because of the sequence of events that occurred. For example, it may have been a prosecution or a conviction that took place and there is some kind of an announcement related to that conviction for a given ministry. That whole sequence of events goes from the collection to the possible sharing of information and eventually the publication of that information.

The key point with that is that in this section of the bill it's really information about complaints. It's not just saying, "Here are all the details about a complaint." It's the ability to refer to a complaint as part of a broader storyline in the use of information and the possible release of information.

Just to add to it, the ministries that are doing this right now also recognize the responsibility that they have in the use and potential release of that information and the potential implications of it. They have taken that responsibility very seriously because of the potential implications of that. So certainly, in terms of historical

responsibility, ministries have exercised significant responsibility in doing that.

Within the bill itself, one of the things that we've recognized in the development of the bill is that we do need to bring consistency across all of the 13 ministries. We've said consistently to our partners that what that means is we have to develop consistent guidelines that the ministries can use in the use of complaint information and the potential for publishing information about complaints of some kind.

I hope that that explains what it is that's driving the use of that kind of information for both sharing and potential publication purposes.

**The Chair:** Wonderful. Thanks for your explanation. Mr. Kormos?

**Mr. Kormos:** Thank you, sir. I appreciate and understand your statement of the government's interest in having paragraph 7 in conjunction with section 5; in particular that paragraph of section 5 that talks about making available to the public the information, section 8.

We're going to have to move on at some point, but understand my concern. I agree with you. You heard me make mention of that before. There's validity in understanding areas of complaint and so on.

Believe it or not, I had a phone call from a constituent in Welland today complaining because the foundry—we've got one foundry left in Welland—was making too much noise. Well, I've got foundry workers and their families down there. When I grew up, you could feel the thump of the drop hammer. You'd wake up in the morning and you'd feel the vibration. You travel blocks—even where I live now, over in the west end where all the Anglos used to live when I was a kid—people like us didn't know what two-storey houses were. It's true, Mr. Racco. We were immigrant families. We lived in the east end. All the rich English people, as we understood them, lived over on the west side. I live in one of those old houses now, but on the right day, in the morning you can hear the drop hammer there.

So I've got a complaint now. I've got to give those people a call and say, "Look, I've got to tell you, my friend, let's be grateful for the noise of the hammer." But here's a complaint; that's a complaint, right? It's a complaint that the Ministry of the Environment may deal with, or it could be within their jurisdiction. Look at the language: "Information about complaints filed in respect of an organization where the complaint is regarding conduct that may be in contravention of designated legislation." I appreciate that it says "designated legislation," but we don't know what that is yet. Presumably, it means basically the range of legislation that falls within the provincial ambit that's of concern to the regulatory authorities.

How does that—and making it available to the public. Where in the legislation—and I appreciate the intent. All the best-laid plans of mice and men often go astray. So I understand the intent, but how does that protect—where is the language here that addresses the concern of Mr. Martiniuk or of myself of having—again, a General



Motors engine plant; they're big guys. They've got PR people. They know how to deal with this stuff. They know how to phone deputy ministers and ADMs. What about the little shop against whom there's a complaint? What do I tell those folks? What do any of my colleagues tell them? Say, "Don't worry. The complaint that's made against you is not going to be made available to the general public, who might just mischievously"—because you know what happens in neighbourhood disputes; right? The NIMBY syndrome. You know what happens: "Hold on, just hold on. We don't want that factory in this neighbourhood." Nobody wants the factory or the little shop in their neighbourhood.

**Mr. Racco:** Not in our backyards.

**Mr. Kormos:** That's right. So what they do is they phone you up and say, "Whoa. Was this information that's pursuant to section 5, paragraph 8?" And you have to say, "Yes, it is." It's about complaints and it's paragraph 7 of section 4. That's within the realm of information that the public has access to. Is the ministerial order drafted carefully enough that you can say, "I'm sorry, I can't tell you that"? If it isn't, you've got to tell me, "Yeah, there were 12 complaints made against this company over the course of—" and I use that then in my campaign. You know what I'm talking about; right? Well, sure, my campaign, because we don't want that—we have a waste treatment facility that's being advocated. Nobody wants those in their community either, do they, Mr. Racco? We'll move them up to Woodbridge. See what your folks have to say.

**Mr. Racco:** I don't represent Woodbridge, Mr. Kormos.

**Mr. Kormos:** Sorry.

**Mr. Racco:** I love the community, but I don't—

**Mr. Kormos:** That's right; Sorbara. But Sorbara, he'd refer it to your MPP's office. He'd say, "Call Racco, don't call me." He's no dummy.

So you're saying that's as good as it gets. We've got to live with what we've got here and the best of intentions. My apologies to the people of Woodbridge.

**Mr. Stager:** If I can go back to the example, I would say that the majority of the regulatory ministries probably receive hundreds to thousands of complaints every year. I think if you look at the record of the ministries that are doing that, it is very strong, and they do take that responsibility very seriously. If you look at the history of ministries and government, they have recognized that the potential for damage of that kind of information is significant and I think have exercised extreme due diligence, recognizing that potential.

We recognize that there's a continuum of activities that represent compliance, of which this is one. It is an important element of a potential story, but we also know that it has to be done right. That's one of the reasons why we've had to work together on this and we have to work together in implementing through guidelines that are consistent across all the ministries. In fact, they have exercised a very high level of diligence in doing that kind of thing.

The only other thing I would add is that this bill doesn't force ministries to do anything. This is a permissive bill; it establishes permission to do something if they so desire, but it doesn't force anyone to do it.

1620

**Mr. Kormos:** Thank you kindly, sir. I appreciate your comments.

**The Chair:** Mr. Racco, any other questions, or can we excuse the gentleman?

**Mr. Racco:** Thank you.

**The Chair:** Thank you. Mr. Martiniuk?

**Mr. Martiniuk:** I honestly believe that the government is making a grave mistake in this section. It may have happened in the past; it shouldn't be contained in this legislation. If the executive and if the crown always acted with regard to the best interests of the public, we wouldn't need members of a Legislature or we wouldn't need courts.

**Mr. Kormos:** Or an Ombudsman.

**Mr. Martiniuk:** Or an Ombudsman. But unfortunately, there are times when the executive chooses to act against the public interest. I'm not suggesting they do it mala fides; they do it quite innocently for what is in their interest. They somehow get confused that their interest is, in fact, "What's good for General Motors is good for the USA." That happens relatively often, and that's our job as legislators.

What I'm saying to you right now is that the executive is putting itself in a difficult position. If one of them steps out of line, you throw a cloud on all members of the executive. That's what this section does. What you're saying is, "Trust us." I've been a member of a government, and I'm saying, "No." You cannot say that, because power is always misused at some time or other; not most of the time, and maybe even rarely, but it is misused. There's nothing in this act to prevent the misuse of the disclosure of innuendo and rumour. That's what this act permits. It is wrong, and so be it.

**Mr. Racco:** I certainly have full confidence in the people working for us that they will use good judgment and they will make good decisions. I'm not questioning that you, Mr. Kormos, are suggesting that. I'm just saying, to answer Mr. Martiniuk's comment, surely if a mistake is made by our staff, we will be legally responsible, as you know. They will use good judgment, as they have done, and I trust that that will continue. That's why this motion cannot be supported.

I didn't want to ask for more comments from you, Mr. Kormos, but—

**The Chair:** Mr. Kormos?

**Mr. Kormos:** I find that an interesting comment from Mr. Racco, because I presume they had good faith in Duncan Brown over at the Ontario Lottery and Gaming Corp. It cost us damn near a billion bucks to get rid of him.

I'm finished with my comments. Thank you.

**The Chair:** Any further speakers before we vote on this?

**Mr. Martiniuk:** Recorded vote.



**The Chair:** A recorded vote's been requested on the amendment that's before us.

#### Ayes

Kormos, Martiniuk.

#### Nays

Brownell, Dhillon, Racco, Rinaldi, Van Bommel.

**The Chair:** That amendment loses.

Moving on to the next amendment, on page 5.

**Mr. Martiniuk:** We're making progress: Two voted for it instead of one this time.

I move that paragraph 9 of section 4 of the bill be struck out and the following substituted:

"9. Information related to an organization's compliance with designated legislation, information about an organization's convictions and penalties imposed on conviction under designated legislation and information regarding orders or notices issued under the designated legislation with respect to an organization."

My comments, shortly, deal with the same concern as my prior motion. I believe that convictions and penalties imposed are of great relevance to anybody considering a particular organization, so let's make that straight. What I object to in this section is "including but not limited to." In other words, they talk about convictions and penalties, but then they say, "But that's not what we're talking about. We're talking about basically all the information we have," and we're back to complaints. So all my amendment does is remove the phrase "including but not limited to," because inserting that would indicate that any information they have—maybe it's even wider than complaints; any information whatever—is authorized to be published. I don't believe that was the intent of the draftsmen when this was drafted, and I therefore move the motion.

**The Chair:** Further speakers?

**Mr. Kormos:** Very briefly, I won't support this amendment because in my interpretation, compliance would suggest that this would include information about requests for compliance with which there had been compliance, therefore no conviction. I think that's information that quite frankly should be public information, never mind information that's subject to the discretion of the minister.

**The Chair:** Any further speakers?

**Mr. Racco:** We can't support this motion. The way this provision is drafted is necessary to account for new legislation and future amendments to Ontario statutes and continuing improvements in compliance activities. We have included safeguards in the bill to ensure the lawful sharing of information among ministries and other regulators of provincial laws. This means that the ministry could only share information that was originally collected under the statutory authority of designated

legislation and that is already in the government's possession.

Finally, we have consulted with the Office of the Information and Privacy Commissioner, and it is comfortable with the approach that we are taking, as I said earlier and as I said on Monday. Those are my comments.

**The Chair:** Any other speakers before we vote on this?

**Mr. Kormos:** I should say I'm not going to support it, but I've voted with the government three times now. On a recorded vote, I'll not lower myself to vote with the government; I'll simply abstain.

**Mr. Martiniuk:** Recorded vote.

#### Ayes

Martiniuk.

#### Nays

Brownell, Dhillon, Racco, Van Bommel.

**The Chair:** That motion loses.

Shall section 4 carry? Section 4 is carried.

Moving on to section 5, we have no amendments before us. Mr. Kormos?

**Mr. Kormos:** I just want to underscore the observations made about paragraph 8. While there are any number of purposes for which the information collected pursuant to sections 7 to 13, being information that is contained in that list that constitutes section 4, let's make it very clear that paragraph 8 indicates that information described in paragraphs 5 to 10, in addition to all of the other purposes for which it's collected, can also be collected, clearly, to make the following available to the public.

**The Chair:** Shall section 5 carry? Section 5 is carried.

Moving on to section 6, there are no amendments before us. Shall section 6 carry? Carried.

Moving on to section 7, once again, no amendments before us. Shall section 7 carry? That is also carried.

Moving on now to section 8, page 6 of your printed material. There's a motion from the government.

**Mr. Racco:** I move that section 8 of the bill be amended by striking out "42(e)" and substituting "42(1)(e)."

That's just a technical amendment.

**The Chair:** Any speakers?

**Mr. Kormos:** And it's because we have the briefing page that there's no need for any questions about it. Mr. Racco is right. It's simply changes the section number to comply with the new section number in the FIPPA. What a nice thing it is to have. What a great thing it is to do to give these briefing notes to opposition members.

**Mr. Racco:** Thank you to the staff again.

**The Chair:** Any further speakers? There being none, those in favour of that amendment? Opposed? That's carried.



Shall section 8, as amended, carry? That is carried.

Moving on now to section 9, the first amendment we have before us in on page 7. It's a PC motion.

1630

**Mr. Martiniuk:** I move that subsection 9(1) of the bill be amended by adding "but shall not disclose it to the other person unless he or she has first informed the person in charge of the place where the observation was made that such disclosure will be made."

May I address the provision?

**The Chair:** Absolutely.

**Mr. Martiniuk:** This was suggested to us by various individuals. What they're saying is, if in fact a defect which could be hazardous to the health and welfare of the employees in an establishment is observed, it's not enough for the individual who is doing the inspection to go back to his or her ministry and distribute that information. It could be days, if not weeks, elapsing. The person who is in charge of the establishment should know immediately that there is a defect and that a complaint will be made so it can be remedied. Otherwise, what this government is saying is, "We're more interested in the prosecution that's going to follow rather than curing the defect to the benefit of employees of this establishment." And I don't think that's your intent; I'm not suggesting that it was the intent the way it was drafted. But I think that, without notice, you're recognizing a hazard but not warning people about the hazard. I think it's a duty incumbent on anybody making an inspection to warn people immediately about a hazard before some injury takes place.

**Mr. Kormos:** Fair enough, and Mr. Martiniuk's amendment addresses or speaks to the problematic nature of the bill. Because nobody quarrels with the proposition, the Ministry of Labour inspector should turn his or her head away from an observation of a potential environmental issue or other similar issue. At the same time, this is one of the problems with the prospect of super-inspectors, or, more importantly, super-inspectors who aren't super-inspectors at all but simply multi-inspectors. An Ag and Food inspector obviously has expertise, experience and history but may not be in a position—and perhaps can observe something that constitutes an environmental problem—but may not be sufficiently skilled to exercise a judgment call right then and there in terms of shutting the place down and red-tagging it. Do they use that phrase in your kind—do you red-tag things? No. Natural gas: when you're pipefitters, you red-tag stuff, right? So whatever the equivalent is to red-tagging an operation, to shut her down. At the same time, you don't want to have people not responding adequately to a situation which is imminent and critical.

Finally, not all observations are observations that are with respect to an imminent crisis. Some are simply with respect to evidence of something else that's going on. So here I go—oh, you should have been there, Mr. Racco. We were doing the Ontario Human Rights Commission—when your government gutted the Ontario Human Rights Commission. And when they were build-

ing the investigative powers—to get a search warrant under the new bill, Mr. Martiniuk, the inspector has to go knock, knock, knock on the door of the employer, who presumably is discriminating, ask them for the information, saying, "I'm here from the human rights. I'm inspecting a violation of human rights and I want the employment files for person X, Y or Z"—you have to do that—"and only when the employer says, "Get out of here," can they go and get a search warrant. Smart, huh? Like nobody has heard of paper shredders. So we don't want a scenario here where conceivably there is evidence that may be of something that's an offence but isn't imminent and critical.

So this is the dilemma. We've got two types of observations. We've got observations of stuff that constitute imminent hazards and you've got observations that are evidence of an offence. So it's a dilemma. But in the interests, is this all about playing "gotcha"? Do you know what I'm saying? Is this the whole purpose of regulation? A regulatory regime as compared to a criminal regime shouldn't be about "gotcha"; in other words, lying in wait and sneaking around and finding evidence. It should be about getting compliance, rather than in a criminal case where you've got the grow op member—what's his name? Jim Karygiannis—sniffing people, threatening everybody. He was talking about going to door to door, sniffing underneath the sill of the door to see if there's any marijuana growing in there, God bless him. So you don't want a marijuana grow op operator being tipped off that the police are going to get a search warrant. That's Criminal Code enforcement.

Regulatory regimes shouldn't be about gotchas, and they shouldn't have as their purpose convictions. The goal is compliance and to encourage compliance and to have inspectors. Heck, you've had all sorts of experience with liquor inspectors, ag and food and so on. Most of these people work well with their constituencies in ensuring compliance. Their goal isn't to charge people. So I'm inclined to agree with Mr. Martiniuk on this one. If the goal really is to encourage compliance, heck, why shouldn't an inspector say, "Whoa, I see something there and I'm going to have to call the Ministry of the Environment people. I'm just letting you know, so you'd better start addressing it"? It's not going to change the nature of the investigation. He or she still observed what they observed. But for Pete's sakes, why wouldn't you? It seems to me that this is a—dare I say it?—common sense amendment.

**The Chair:** Thank you. All those in favour of the amendment?

**Mr. Racco:** Mr. Chair, I think I may be able to assist Mr. Kormos and Mr. Martiniuk with some comments that may change their minds. This provision allows only for a heads-up based on observations. So that's an observation, Mr. Kormos. At the time that an observation is made, there is no verification that there is an infraction of any law or whether any remedy or action is required. So you are asking for someone to potentially intervene when there is not necessarily a problem. Therefore, it would be



premature to involve the business owner at the time that the observation is made. After receiving a heads-up, qualified and properly trained staff would conduct any potential follow-up activities under the relevant legislation. The inspectors who are knowledgeable about that potential problem, if they feel there's a need, will go and do an inspection. To provide concerns to the business prior to having enough information or feeling that there is a problem, you're exposing the business to concerns, potentially costs, that they may incur because they want to make sure they take care of the problem before somebody shows up at their facility. So I'm not too sure that you are helping the business community by going that way.

Those are my comments, Mr. Chair, and because of that, I can't support the amendment.

**The Chair:** Thank you. Any further speakers?

**Mr. Martiniuk:** My primary concern in bringing this motion for amendment was that there is an imminent danger. I think there's an obligation on us as legislators to ensure that that danger is done away with.

Number two, it seems almost a circular argument in this section because, if they do not disclose, or they make an inspection and, as you said, they are not equipped to make an intelligent or knowledgeable inspection, then what are they doing? Are they not going to receive any training whatsoever in these other fields? I have an amendment later that talks about inspectors who are super-inspectors who should be receiving the necessary training. Your answer seems to suggest that people will be making observations without any training, and because those observations are made without any training, they are unintelligent or unknowledgeable—not unintelligent; unknowledgeable. In other words, they don't know what they are talking about. You're assuming that they're going to be totally untrained in those other fields, and that sounds like a very dangerous situation to me.

1640

**The Chair:** All those in favour of the amendment? All those opposed? That amendment loses.

The next amendment we're dealing with is on page 8. It's a government amendment.

**Mr. Racco:** I move that subsection 9(2) of the bill be amended by striking out "41(b) and 42(c)" and substituting "41(1)(b) and 42(1)(c)."

**The Chair:** All in favour? No speakers? It's carried.

Shall section 9, as amended, carry? Carried.

Section 10: The first amendment we have before us is from Mr. Martiniuk.

**Mr. Martiniuk:** I move that paragraph 3 of subsection 10(4) of the bill be struck out.

**The Chair:** Are you speaking to the motion?

**Mr. Martiniuk:** I've already explained my concern with information about complaints and the disclosure of that to the public, and the dangers in that.

**The Chair:** Any further speakers? Seeing none, all those in favour? All those opposed? That motion loses.

Moving on to page 10, Mr. Martiniuk.

**Mr. Martiniuk:** I move that paragraph 3 of subsection 10(4) of the bill be amended by adding "if the minister is of the opinion that the complaint was made in good faith."

**The Chair:** Are you speaking to the motion?

**Mr. Martiniuk:** As the government does not seem to be concerned about basing its public trust on gossip, rumour and innuendo, I am suggesting in this motion, not that they verify the complaint—I'm not even going that far, although I should—but I am saying that it should have at least been made without malice. The way it is now, this government is going to accept and distribute to the general public, in all good faith, information that they have received that was made with malice—malice to injure a third party—and there is no safeguard built in. This builds in some small degree of safeguard, and that's my intent.

**The Chair:** Any further speakers? Seeing none, shall the amendment carry?

**Mr. Martiniuk:** A recorded vote, please.

## Ayes

Martiniuk.

## Nays

Brownell, Dhillon, Racco, Rinaldi, Van Bommel.

**The Chair:** That amendment loses.

Shall section 10 carry? That's carried.

Section 11: One amendment from the government, on page 11.

**Mr. Racco:** I move that section 11 of the bill be amended by striking out "42(e)" and substituting "42(1)(e)."

**The Chair:** All those in favour of the amendment? Carried.

Shall section 11, as amended, carry? Carried.

Page 12, section 11.1. Mr. Racco.

**Mr. Racco:** I'm sorry, which section is that?

**The Chair:** We're on section 11.1, on page 12.

**Mr. Racco:** I move that part II of the bill be amended by adding the following section:

"Legislation no longer in force

"Designating repealed legislation

"11.1(1) The Lieutenant Governor in Council may make regulations designating a repealed act or a revoked regulation for the purposes of section 7 or section 10.

"Same

"(2) A regulation made under this section may,

"(a) designate a repealed act or revoked regulation in whole or in part;

"(b) specify that a designation is limited and only applies for such purposes as are set out in the regulation.

"Regulations designated by default

"(3) Where all or part of a repealed act is designated under this section, all regulations made under that



repealed act are also designated, unless the regulations designating that repealed act provide otherwise.

“Other provisions apply

“(4) Sections 7 and 8 apply with necessary modifications with respect to a repealed act or revoked regulation designated for the purposes of section 7.

“Same

“(5) Subsections 10(4) to (6) and section 11 apply with necessary modifications with respect to a repealed act or revoked regulation designated for the purposes of section 10.

“Minister responsible

“(6) The Lieutenant Governor in Council shall, in making regulations under this section, specify which minister shall be the ‘minister responsible’ for the purposes of,

“(a) exercising the powers set out in subsection 7(2), with respect to a repealed act or revoked regulation designated for the purposes of section 7;

“(b) publishing information under subsection 10(4), with respect to a repealed act or revoked regulation designated for the purposes of section 10.”

**The Chair:** Any speakers?

**Mr. Kormos:** That certainly warrants an explanation, Mr. Racco.

**Mr. Racco:** This bill, if passed, will enable regulatory ministries to work together better and use information more effectively and target enforcement efforts where they count. In order to allow our regulatory staff to achieve those goals, they require access to the information collected under repealed legislation, information that was lawfully collected and is already in the government possession. Permitting the sharing and use of information collected under repealed legislation would provide ministries with a pool of historic information. This would enable them to better understand the compliance histories of the organizations they regulate. For example, where several ministries are working together to clean up a contaminated site, they may need access to information that was collected under a repealed act.

**Mr. Kormos:** This raises the issue that was the subject matter of questioning yesterday. Perhaps we could get some help. What is it that prohibits—because I trust that we’re talking about convictions or non-compliance with legislation or regulations that are now repealed. That’s fair enough—the historical data. Maybe we could understand a little more clearly why we need this section. In other words, why can’t we access that data, that information now?

**The Chair:** You would like a member of staff to answer that?

**Mr. Kormos:** Please, if we could, just so we know what we’re voting for here.

**Mr. Stager:** This piece of the act, or this proposed amendment, is really just a supplement to the bill itself. Again, if you look at the contents of the bill and the sequence of types and purposes of information, it is a compliance continuum that it is really trying to follow, from the initial filing of a request or a complaint to the

follow-up: possible inspection, possible enforcement action. That kind of information now becomes part of the information collection and sharing piece of the legislation.

This is really just to ensure that as we designate statutes that would be enabled by the legislation for collection, use and disclosure, for example, it also includes acts that are no longer valid. So we may have information from a repealed act, and we just want to make sure that that information is actually available for us to use for compliance purposes. We will have the designated statutes that would identify, for example, in collection, use and disclosure, which statutes apply to it. We just want to ensure that that also includes any repealed act that would be under those statutes. So it’s really that purpose.

**Mr. Kormos:** That part I understood. Give me a for example of why we can’t do that—or why you can’t do that—without this legislation, which goes to the whole subject matter of Bill 69 as well.

1650

**Mr. Stager:** I can certainly ask my legal representative to comment on it, but from a program perspective, I think it’s really just to ensure that that can happen. It is really just a confirmation that in fact we can do that.

**Mr. Kormos:** But my question is, what prohibits an authorized person—not authorized in the legal sense, but a civil servant—in performing his role from getting that data now?

**Mr. Stager:** There could be several reasons. Certainly the confidentiality provisions that are in existing statutes right now may stop you from doing that. Again, the focus within the statute is on information under current statutes. As I mentioned before, I think it really is just to say that we want to ensure that if there are repealed statutes, there is no question legally that we can do it.

**Mr. Kormos:** Help me: confidentiality provisions in a statute like?

**Mr. Stager:** I think there are actually 22.

**Mr. Kormos:** Give me one.

**Mr. Stager:** The Environmental Protection Act was an example. They’re actually in the back of the bill.

**Mr. Kormos:** Okay. The ones that are being—

**Mr. Stager:** The consequential amendments within the bill.

**Mr. Kormos:** Ah, yes. So you’re—because we’re going to get to those. I was going to ask why you didn’t just revoke the confidentiality provisions.

**Mr. Stager:** We’re actually amending the confidentiality provisions in the bill.

**Mr. Kormos:** You are?

**Mr. Stager:** They are included in the bill as consequential amendments.

**Mr. Kormos:** Yes, the revocation of confidentiality provisions.

**Mr. Stager:** Or the changing of the confidentiality provisions.

**Mr. Kormos:** Yes. That’s what I was getting to.

**Mr. Stager:** Yes.



**Mr. Kormos:** So why don't you just do that?

**Mr. Stager:** Ken, do you have a comment?

**The Chair:** If you'd identify yourself for Hansard, sir, before you answer.

**Mr. Ken Lung:** Ken Lung. I'm counsel with the Ministry of Labour. Statutes historically have been developed with a view that information collected under that statute would be used for the purposes of that statute. Absent strict prohibitions around sharing, the statutes are generally silent, are largely silent, around the ability to use that information collected under that statute for a purpose other than for the purposes of that statute. These provisions in the proposed bill would simply provide clear authority for the sharing of that information and provide some rules around how that should happen. That's one of the primary purposes around the provisions in the bill.

**Mr. Kormos:** I want to understand this really clearly because I've got to do an hour lead on this on third. So you're telling us that this bill is but a safeguard to ensure that we can do what we think we probably can do currently in terms of accessing this information?

**Mr. Stager:** This is specific to the amendment that's being proposed here.

**Mr. Kormos:** The repealed legislation, yes.

**Mr. Stager:** Right. What we're saying is that we want to ensure that we can access information under repealed legislation. That's the point that I think we're speaking to.

**Mr. Kormos:** Right, except in terms of existing legislation being amended—the technical standards act: "An inspector shall not disclose ... except,

(a) for the purposes of carrying out his or her duties under this act and the regulations," which is what we're talking about, right?

**Mr. Stager:** Right.

**Mr. Kormos:** So we're repealing the confidentiality provisions so you don't have the silo any more, at least with respect to information. I appreciate the enforcement issue is a different silo issue. And since you can't repeal confidentiality provisions of a repealed statute, you've got 11.1?

**Mr. Stager:** Sorry?

**The Chair:** I think you might want to repeat the end of that, Mr. Kormos.

**Mr. Kormos:** Since you can't repeal the confidentiality provisions of repealed statutes, since you can't amend a repealed statute, you've got 11.1.

**Mr. Stager:** Right. So for example, the confidentiality restrictions have been amended in the bill for legislation that includes them right now. However, if there is a repealed version of the bill that is designated for confidentiality as one of the amendments in the bill, what we want to do is ensure that the previous versions of that bill that are being designated are also included. It's a safeguard to say that we have amended confidentiality provisions to allow for collection and sharing of that kind of information. We would designate which statutes we mean by that. In addition, the proposed amendment is

saying that any previous versions of those statutes would also apply, basically. We want to also be able to have access to repealed versions of the designated statutes. It's really a catch-all phrase to say "designated statutes" but also repealed versions of statutes.

**Mr. Kormos:** I'm not aware of any litigation around, let's say, the Travel Industry Act and information about the Travel Industry Act being disclosed from—it used to be the Ministry of Consumer and Commercial Relations; I have no idea what ministry deals with that now, because there isn't one anymore. Were ministries actually saying, "We're not going to give that to you because we're not permitted by statute?" Is that how it was working?

**Mr. Stager:** It certainly does happen. With confidentiality provisions, some of the wording says exactly that.

**Mr. Kormos:** So DM to DM were saying no, without any—because nobody was afraid of being sued, were they?

**Mr. Stager:** If you look at the wording in a statute under "confidentiality," it may say, "You are only to collect and use the information for the purposes of enforcing the statute," just as an example of what it might be.

**Mr. Lung:** In many, many statutes, there wouldn't be any confidentiality provisions at all, but there would be an understanding, when you actually look at the statute as a whole, that information collected under that statute would be used for the purposes of that statute and the authority was uncertain. This would clarify the authority for the purposes of going forward. That would be the purpose.

**Mr. Stager:** I think one of the reasons why this amendment is included is that this is very much a bill about using information effectively. We just want to make sure within the premises of the bill that we are covering what needs to be covered in the event there are questions in the future. It's really just a safeguard to ensure that we have in fact covered not only current legislation but legislation that may have been repealed, because this is about a suite of information and the use of that information in the future.

**Mr. Kormos:** And I'm not quarrelling. I think I have a little bit of a feeling about how these sorts of things develop. So this really isn't a bill that's addressing a problem; it's addressing an anticipated problem.

**Mr. Stager:** It's both. Certainly the use of confidentiality restrictions is an issue and it's a challenge that needs to be addressed. Otherwise, if ministries want to work together in the future, that really fundamentally blocks them from being able to use information and share it with each other, so that is certainly a block to being able to work together. There are other elements where there is a confirmation within the act where we believe, yes, you can do it through the act. So it's a little bit of both.

**Mr. Kormos:** Thank you. I appreciate the conversation.



**The Chair:** Any other questions of these gentlemen while they're at the table?

**Mr. Martiniuk:** Yes, I have one. I just don't understand. Are you saying that this legalizes information that was collected under a statute which has now been removed, and that that information was legally collected under that statute or illegally collected under that statute; in other words, in a grey area? Which is it?

**Mr. Stager:** Can you clarify "illegally collected"? Do you mean by ministries?

**Mr. Martiniuk:** I mean, it wasn't authorized under that statute. Let's put it this way. I thought you said—and I may be incorrect—that information is collected under a statute and there was no specific authorization for that information to be collected under that statute. Does this act now legalize that and say that whether it was authorized or not under the revised statute, it now is authorized, in any event, retroactively?

**Mr. Stager:** It doesn't change any of the information that is currently collected by line ministries under their statutes. All it does is establish a permission to be able to share the information that is legally collected under current statutes. It's not establishing a permission for any information other than what is already being collected legally by line ministries.

**Mr. Martiniuk:** So what you're saying is, that information was legally collected to start with under a former statute?

**Mr. Stager:** Right.

**Mr. Martiniuk:** Thank you.

**The Chair:** Section 11.1: Shall the amendment carry? Carried.

Shall section 11.1 carry? Carried.

Moving on to page 13, section 12.

1700

**Mr. Racco:** I move that clause 12(2)(a) of the bill be amended by adding "or regulation" after "an act."

Again, technical.

**The Chair:** Are there any questions on that? Seeing none, shall the amendment carry? Carried.

Shall section 12, as amended, carry? That's carried as well.

Section 13, starting with Mr. Martiniuk.

**Mr. Martiniuk:** I move that subsections 13(1) and (2) of the bill be amended by adding, in each case, "Subject to subsection (2.1)" at the beginning and that section 13 be amended by adding the following subsection:

"Only qualified persons may be authorized

"(2.1) A person or class of persons shall not be authorized under subsection (1) or (2) to exercise a power or perform a duty under an act or regulation unless the person or the class of persons possesses the qualifications that someone would be required to possess in accordance with the relevant legislation in order to exercise the power or perform the duty."

**The Chair:** Speaking to the amendment?

**Mr. Martiniuk:** Very simply, I think we've heard suggestions today that some of our statutes are going to send out inspectors who are not qualified to recognize the

problems, but that's where we have a cross-inspection. In this particular section, we are appointing in effect a super-inspector, a person who one of our delegates suggested we shouldn't get into for various reasons, and I must say I agree with her. But if, in fact, two jurisdictions under two different statutes are given to one inspector, this section would ensure that that person would be trained and able to perform his or her duties in both of those designated jurisdictions, not just in one, and that's all it does. What it's saying is that if there are multiple authorizations resting on one person, that person should be certified or trained in all of the areas in which they receive a designation.

**The Chair:** Thank you, Mr. Martiniuk. Mr. Kormos?

**Mr. Kormos:** Well, Chair, it's interesting to find Mr. Martiniuk in bed with Leah Casselman and OPSEU. What next? We're going to see him waving a picket sign, chanting, "No justice, no peace"?

**Mr. Martiniuk:** I've already done that, Mr. Kormos.

**Mr. Kormos:** If Mr. Martiniuk wants to be but a mouthpiece and a tool for the trade union movement, God bless him, and I'm pleased to join him 100% in support of this amendment.

Look, what we're addressing here, because nobody's quarrelling—and, quite frankly, it was Leah Casselman who made the very astute observation. Nobody's quarrelling with ensuring that an inspector has the power to identify things that are relevant under acts for which he or she is not an inspector, but the concern was an effort on the part of the administration to create what have been called "super-inspectors." I'm not sure that's the best possible language, because that implies that they can be all things to all acts—the multi-inspector. Look, we all know these inspectors in any number of jurisdictions because of our backgrounds and so on. They're incredibly talented people, skilled people. Many of them have worked in the industry that they're now involved in inspecting in terms of the regulatory role. There are subtleties, there are instincts that they acquire that the person walking in off the street or even the inspector coming in off the street with another area of expertise, another background, isn't going to have.

So I support this because it makes it clear that there will not be multi-inspectors, jacks of all trades and masters of none, in the inspection field, but rather that we will recognize the professionalism of our public service inspectors and ensure that when there is an inspector performing roles under more than one ministry, under more than one regulatory jurisdiction, that inspector is fully trained in that regard. More importantly, the preference would be that there be specific inspectors assigned to specific areas. What does that make it? A ménage à trois, I suppose, if Mr. Martiniuk is in bed with OPSEU and I join them. Whoever thought that Martiniuk and I would be engaged in a ménage à trois together? But there we are. Strange bedfellows, isn't it, Mr. Martiniuk? Put that one in your householder, sir. But I'm pleased to support this.

**Mr. Lou Rinaldi (Northumberland):** I know you will.



**The Chair:** Okay, thank you.

**Mr. Racco:** I just want to say quickly that we don't have any intention, Mr. Martiniuk, as I said earlier, to have any super-inspector. We've said that over and over again, and I just want to make sure you appreciate that. We have heard from our stakeholders concerns about some aspects of the bill, and therefore we will develop guidelines and train staff to facilitate responsible and consistent cross-ministry practices. Normal practice of government does not assign duty to a person unless they are properly trained, and we do not see this situation as being any different and therefore do not support your amendment.

**The Chair:** All those in favour—

**Mr. Kormos:** Recorded vote, sir.

#### Ayes

Kormos, Martiniuk.

#### Nays

Brownell, Dhillon, Racco, Rinaldi, Van Bommel.

**The Chair:** That amendment loses.

Moving on to the amendment on page 15.

**Mr. Racco:** I move that subsection 13(7) of the bill be amended by striking out "41(b) and 42(c)" and substituting "41(1)(b) and 42(1)(c)."

Again, it's a technical amendment.

**The Chair:** Shall that amendment carry? The amendment is carried.

I draw your attention to a notice on page 16. Mr. Martiniuk, any comments?

**Mr. Martiniuk:** No.

**The Chair:** No comments. Thank you. Mr. Kormos?

**Mr. Kormos:** Look, section 13 carries with it, notwithstanding the assurances of Mr. Racco—but who knows? After October 10, Mr. Racco may not be the parliamentary assistant. He could be the minister responsible for lottery and gaming.

**Mr. Racco:** Thanks.

**Mr. Kormos:** In fact, he might be the minister responsible for lottery and gaming long before October 10, depending upon how the next few days go. So I appreciate his assurances, but I think section 13, without the amendment proposed by Mr. Martiniuk, fails to address the concerns, and I'll not be supporting section 13.

**The Chair:** Shall section 13, as amended, carry?

**Mr. Martiniuk:** A recorded vote, please.

#### Ayes

Brownell, Dhillon, Racco, Rinaldi, Van Bommel.

#### Nays

Kormos, Martiniuk.

**The Chair:** That section is carried.

Moving on to section 14, we have no amendments. Shall section 14 carry?

**Mr. Kormos:** I support section 14. But let's face it, Chair, notwithstanding the press releases of the Ministry of the Attorney General, if we don't have sufficient justices of the peace and courtrooms to accommodate what are some very complex trials under these various regulatory regimes, convictions become irrelevant. If we've got charges being dismissed because of Askov and the delays that lead to Askov applications, we've got pressure on prosecutors to plea bargain. And you know this as well as I do. When there's a fatality—and let's face it: One of the things that most of us have to tell the parties of victims in almost any situation is that at the end of the day, one thing we can assure them is that they probably won't be satisfied with the result one way or another.

1710

You've had to deal with this; we all have in our constituencies: workers, and even more tragically young workers, seriously injured or killed on the work site. This is the very sort of regulatory regime that we deal with. And when a family—a young wife or husband and children of a dead worker—sees fines of \$100,000, they consider that a paltry price to pay for the life of a worker. You and I both know that there's pressure on prosecutors, through no fault of their own. The vast majority of prosecutors are conscientious, well trained, aggressive and eager to ensure that cases get a full hearing. But if they have pressure put on them in terms of caseloads, if they have pressure put on them in terms of delays in the process, prosecutors then are increasingly compelled to sit down and cut a deal, as they say—that's what lawyers tell me it's called, cutting a deal—with the defence.

So I support section 14, but I simply say that we'd better make sure that we beef up numbers of JPs and courtroom availability, including court staff. And you know, Chair, that we are at risk of losing a big chunk of Ministry of the Attorney General staff—those court staff who were contract workers—who are now flexible part-time, FPTs. You've heard from them in all of your ridings, haven't you, the FPTs who were moved from contract status to FPT status but got shafted in the process? Court administrators are hiring the FPTs only to the maximum number of hours—basically their minimum—and then hiring contract staff, because court administrators haven't been told by the Ministry of the Attorney General to stop that practice and give FPTs priority over contract people. I've talked to FPTs in the Ministry of the Attorney General who are at risk of losing their home; I've talked to FPTs who literally have gone to food banks. You see, what happens is that they're allocated X numbers of hours, and if they work in excess of those hours, their per hour rate increases. So court administrators are not hiring them to work beyond those X numbers of hours; they're going out to contract people.

The other thing that's happening to FPTs in the Ministry of the Attorney General right now, Mr. Racco—



this is true—is that when they work in excess of their base hours, they oftentimes have to wait till the end of the pay year to get paid for that. So they're earning the money but not getting paid for it. And to be fair to both the government and to those workers and their union, that was not the intention when the letter of understanding was attached to the contract during the course of the last contract negotiations. But that's been the net result as a result of court administrators abusing that. I know that the Minister of Government Services has got the matter before him now, but if we start losing those staff—they're the people who keep the transcripts, they're the people who keep the information in the right place, and if you start losing information, charges get withdrawn. That's what happens, Mr. Racco. If you don't have transcripts available on appeal, charges get tossed because there's no transcript, and there's no way an appellate court can do anything other than say, "Appeal granted." So if we lose these people, we are in deep trouble, and all the tough sentencing provisions in the world are worth this.

I support section 14.

**The Chair:** Further speakers? Shall section 14 carry?

**Mr. Martiniuk:** Recorded vote, please.

#### Ayes

Brownell, Dhillon, Kormos, Martiniuk, Racco, Rinaldi, Van Bommel.

**Mr. Racco:** You're talking about the section, right?

**The Chair:** Yes.

Shall section 14 carry? Everybody clear? Okay, let's do it one more time. I think it's unanimous here.

**Mr. Kormos:** Whoa. It carried well, I thought.

**The Chair:** It carried unanimously, but I think there was some confusion as to whether—did you get everything you needed, Madam Clerk?

*Interjection.*

**The Chair:** Thank you.

**Mr. Kormos:** How could there have been confusion?

**Mr. Racco:** After Mr. Kormos's speech, people were not clear. That was the problem.

**The Chair:** Okay, let's move on to section 15. There's a notice from the PC Party. Mr. Martiniuk, any comments?

**Mr. Martiniuk:** Recorded vote, please.

**Mr. Kormos:** One moment, Chair, if I may. This has become a bad habit around here and it's been going on for a long time—not a long, long time, but it's been years. These immunity sections really rot my socks because they diminish, in my view, the standard of care that responsible parties should be required to maintain. I don't like them. We're specifically talking about no proceeding for damages. It's easy for us to say, "Oh, well, let's not allow people to seek damages if something is done in good faith in the exercising of his or her duty." But say that to the person who is the innocent victim, who's been damaged by it. What this section says is, "So

long, been good to know you. You're on your own. Farewell, adios, ciao." I find these really objectionable.

If somebody is damaged by a conduct of the government, a conduct of the state, it's my view that they should be compensated, end of story. If you can't expect to be compensated—we're not talking about hurt feelings. We're not talking about somebody whose nose is out of joint because they were treated rudely by somebody somewhere. We're talking about people who suffer monetary loss. For the life of me, these immunity sections—I've objected to them and opposed them in legislation for a good chunk of time now—are power things. I just hope nobody here becomes a victim of these immunity sections.

Do you understand how unjust this sounds to somebody who suffers real damages? "Well, we were acting in good faith in the course of the performance of our duties under the legislation." "Yes, but I am out \$10,000." "So what? We were acting in good faith." "But I'm out \$10,000. Don't you understand?"

To folks here that doesn't mean anything because, heck, you got the salary increase and \$10,000 is a drop in the bucket. But to people out there who work hard, the entrepreneurs, \$10,000 is a lot of money. Ms. Van Bommel knows that. She knows those folks. She understands them. She sympathizes with them. She speaks up for them. Ms. Van Bommel advocates for those people. She does.

I say that we should be very cautious. The government members are going to support this section, God bless, but just watch. This will come back and bite you on the nose at some point, somewhere, somehow.

A recorded vote, please, when you call one on section 15, please.

#### Ayes

Brownell, Dhillon, Racco, Rinaldi, Van Bommel.

#### Nays

Kormos, Martiniuk.

**The Chair:** Section 15 is carried.

Moving on to section 16.

**Mr. Martiniuk:** A recorded vote, please.

**The Chair:** Shall section 16 carry?

**Mr. Kormos:** Let's have a little—

**The Chair:** Do you want to speak to it?

**Mr. Kormos:** Yes, just very quickly.

"Why not?" is the question I ask. Why not? What you're talking about is having a justice of the peace sign a subpoena for somebody. Mr. Martiniuk can help because he's a lawyer. It seems to me, the way that lawyers have explained it to me, that if you go to get a subpoena, you have to justify it. You can't just subpoena anybody, but you have to convince the justice of the peace or judge that the evidence they're going to give is relevant and that they're material to your case.



**Mr. Martiniuk:** I think you're talking about summonses.

**Mr. Kormos:** A summons. No, a subpoena, when you're called as a witness.

1720

**Mr. Martiniuk:** You don't need permission of anybody—

**Mr. Kormos:** When it's civil; you're about talking civil subpoenas. In a criminal subpoena, you need to justify the witness as relevant. Otherwise, you have to give travel money, right? How much travel money do you have to give now, Mr. Martiniuk?

**Mr. Martiniuk:** Fifty bucks.

**Mr. Kormos:** Fifty bucks? Okay. But my question is, why not? Again, if you need the evidence to pursue justice and you need the evidence of somebody acting under this act, why shouldn't you be able to subpoena them, summons them? Why shouldn't they make themselves available as a witness? For the life of me, why not? What if their evidence is critical to your case? Are you to be denied justice again because of a statutory provision—the evidence that that person could give—because that's in effect what it says.

Let's try to generate an example, Mr. Martiniuk, because you've got far more experience in this than anybody else here. Let's say somebody—

**Mr. Martiniuk:** An automobile accident.

**Mr. Kormos:** Okay, an automobile accident that happened at the loading dock, and there were provincial inspectors present. You've got a Ministry of Labour inspector there who was collecting information about, let's say, those speed strips, about loading docks, about any other number of issues—I'm not talking about just being an eyewitness to the accident—and who has data that would allow you either as the victim to seek damages for your injuries or, as the defendant, to defend yourself. Here's an inspector who may have taken measurements, who may have hard data, who may have photographs that could assist either party. Why shouldn't that person, like anybody else, be able to be called upon to produce that information in a court? Once again, the process is going to determine the relevance, right? The judge is not going to treat you very kindly if you've called somebody frivolously. I don't know. I think the real question is, why not? Is there a good answer to that, Mr. Racco?

**Mr. Racco:** I suppose.

**Mr. Kormos:** But is there a good answer to why not? See, that's the problem: boilerplate.

**The Chair:** Thank you, Mr. Kormos.

**Mr. Martiniuk:** Recorded vote, please.

#### Ayes

Brownell, Dhillon, Racco, Rinaldi, Van Bommel.

#### Nays

Kormos, Martiniuk.

**The Chair:** Section 16 carries.

Moving on to section 17.

**Mr. Kormos:** If I may, Chair, the same arguments apply: Why not?

A recorded vote, as Mr. Martiniuk has requested.

**The Chair:** Recorded vote.

#### Ayes

Brownell, Dhillon, Racco, Rinaldi, Van Bommel.

#### Nays

Kormos, Martiniuk.

**The Chair:** Section 17 carries.

Moving on to section 18, on page 20: one amendment from the government.

**Mr. Racco:** I move that clause 18(b) of the act be amended by striking out "classes of."

**The Chair:** That was "act," was it?

*Interjection.*

**The Chair:** It should read "bill." You may have "act" on your page, but it should be "bill."

**Mr. Racco:** It should be "bill," yes.

**The Chair:** Any speakers? Mr. Racco, any comments?

**Mr. Racco:** No. Again, it's a technical amendment.

**The Chair:** Anybody else? Mr. Kormos?

**Mr. Kormos:** If I may, I'm looking for anything that I—you say "technical," as if it somehow was a correction of grammar or a spelling correction. Well, it's not. It's the difference between specifying "classes of owners" and then specifying "owners." There's a big difference, right?

**Mr. Racco:** I'd be happy, Mr. Chair, if Mr. Kormos wants, to have legal staff assist us.

**Mr. Halporn:** I can address that. It's just because the Legislation Act, which is going to come into force in a few months, is going to clarify that this power adheres to every regulation-making authority. So every person who's able to make a regulation will be able to specify classes. It's just to sort of tidy up, because this is going to be the law across the board.

**Mr. Kormos:** Okay, help us, because let me tell you where I see the difference. Specifying "classes of owners" means you identify a category, however you want to define that class, without naming owners or organizations. Is that fair?

**Mr. Halporn:** Yes.

**Mr. Kormos:** Whereas deleting it, and now specifying "owners," means you do it piecemeal: You do it one owner at a time.

Here's an example. Mr. Martiniuk was talking about a class of employers with less than five employees. That would be a class. The regulation power as it reads says that you could make a regulation saying, "Excludes employers with fewer than five employees." Otherwise, you've got to name the employers. So how does that help us down the road?



**Mr. Halporn:** It's because the ability to specify classes is going to apply across all legislation when the Legislation Act comes into force in I think October.

**Mr. Kormos:** So where it says "owners," the Lieutenant Governor in Council, the cabinet, will then have a choice of either specifying "owners," or you're saying that the statute will give it—where it says "owners," you can also read into that "classes of owners."

**Mr. Halporn:** Exactly.

**Mr. Kormos:** Okay.

**Mr. Racco:** I knew you were going to get it straight. I had full confidence in you, Mr. Kormos.

**Mr. Kormos:** Well, no, it's you I rely upon, and Mr. Halporn.

**The Chair:** Did anyone ask for a recorded vote on this? No? All those in favour? Carried.

**Mr. Martiniuk:** I'd have no objection if we dealt with sections 19 to 43 in one motion.

**The Chair:** Thank you. Before we move on, shall section 18, as amended, carry? That is carried.

Mr. Martiniuk has suggested that we deal with sections 19 through 43, consequential amendments, at once. Shall they carry? Carried.

Moving on to section 44, there's one amendment from the government, on page 21.

**Mr. Racco:** I move that section 44 of the bill be struck out and the following substituted:

"Commencement

"44(1) This section and section 45 come into force on the day this act receives royal assent.

"Same

"(2) Sections 1 to 43 come into force eight months after the day this act receives royal assent."

**The Chair:** Would you like to speak to the motion?

**Mr. Racco:** We have heard our stakeholders' concerns about some aspects of the bill, and therefore we will develop guidelines and train staff to facilitate responsible and consistent cross-ministry practices. In developing these guidelines, we will work with our stakeholders, including the Office of the Information and Privacy Commissioner, and amend the coming-into-force

date, which will come eight months after royal assent. This would correctly reflect the necessary implementation time frame of the act, should the bill pass.

**The Chair:** Any questions? Shall the amendment carry? It is carried.

Shall section 44, as amended, carry? That is also carried.

Section 45, the short title: Shall section 45 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 69, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

Any other items? Any other issues?

**Mr. Racco:** Just let me thank staff for the hard work they put into this, and of course Mr. Kormos, Mr. Martiniuk, my colleagues and you, Mr. Chair. Thank you.

**Mr. Kormos:** That prompts me to make this observation: Mr. Racco's stewardship of this bill has probably been the one single factor that's responsible for its success here at committee. There are any number of other parliamentary assistants who I have no doubt would have failed to have taken us through this bill in the manner that Mr. Racco has. I note that it's Mr. Racco, the parliamentary assistant, to whom the minister has delegated that responsibility. Mr. Racco has been doing all the heavy lifting, not the minister, and it's Mr. Racco who will undoubtedly be attending to the bill during the lengthy third reading debate in the chamber, not the minister.

I, for one, don't see why Mr. Racco shouldn't be sitting at that cabinet table as well. I'll tell you this: The opposition are doing everything they can to generate a vacancy. And I want Mr. Racco to know that although there will probably be some elbowing and pushing and shoving, I think he'd better get himself to the front of the line.

**The Chair:** Thank you. On that note, we're adjourned.

*The committee adjourned at 1731.*











## CONTENTS

Wednesday 28 March 2007

**Regulatory Modernization Act, 2007, Bill 69, Mr. Peters / Loi de 2007 sur  
la modernisation de la réglementation, projet de loi 69, M. Peters ..... G-1059**

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### **Chair / Président**

Mr. Kevin Daniel Flynn (Oakville L)

#### **Vice-Chair / Vice-Président**

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)  
Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)  
Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)  
Mr. Kevin Daniel Flynn (Oakville L)  
Mr. Jerry J. Ouellette (Oshawa PC)  
Mr. Tim Peterson (Mississauga South / Mississauga-Sud L)  
Mr. Lou Rinaldi (Northumberland L)  
Mr. Peter Tabuns (Toronto–Danforth ND)  
Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### **Substitutions / Membres remplaçants**

Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)  
Mr. Gerry Martiniuk (Cambridge PC)  
Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot L)  
Mr. Mario G. Racco (Thornhill L)  
Mrs. Maria Van Bommel (Lambton–Kent–Middlesex L)

#### **Also taking part / Autres participants et participantes**

Mr. John Stager, assistant deputy minister, II&E business transformation, Ministry of Labour  
Mr. Ken Lung, deputy director, legal services branch, Ministry of Labour

#### **Clerk / Greffière**

Ms. Susan Sourial

#### **Staff / Personnel**

Mr. David Halporn, legislative counsel



G-46

G-46

ISSN 1180-5218

**Legislative Assembly  
of Ontario**

Second Session, 38<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**

Deuxième session, 38<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

Wednesday 2 May 2007

**Journal  
des débats  
(Hansard)**

Mercredi 2 mai 2007

**Standing committee on  
general government**

Endangered Species Act, 2007

**Comité permanent des  
affaires gouvernementales**

Loi de 2007 sur les espèces en  
voie de disparition

Chair: Kevin Daniel Flynn  
Clerk: Susan Sourial

Président : Kevin Daniel Flynn  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

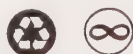
L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 2 May 2007

Mercredi 2 mai 2007

*The committee met at 1004 in committee room 1.*

## SUBCOMMITTEE REPORT

**The Chair (Mr. Kevin Flynn):** We're called to order. I think we do have a quorum now.

The first order of business is the report of the subcommittee on committee business. Does this need to be read into the record? It does.

**Mr. Gilles Bisson (Timmins–James Bay):** I move—I'm just trying to speed things up.

**The Chair:** Okay, moved by Gilles. David is prepared to—are you going to move it?

**Mr. Bisson:** Yes, sure.

**The Chair:** And read it?

*Interjection.*

**Mr. Bisson:** I'll let you read it. That's your job. That's what we pay you the big bucks for. Go ahead.

**Mr. David Oraziotti (Sault Ste. Marie):** Your subcommittee on committee business met on Friday, April 27, 2007, to consider the method of proceeding on Bill 184, An Act to protect species at risk and to make related changes to other Acts, 2007, and recommends the following:

(1) That the committee hold public hearings at Queen's Park on Wednesday, May 2, and Monday, May 7, 2007, as per the order of the House dated April 23, 2007.

(2) That the committee clerk be authorized to schedule the 17 groups that have already requested to appear. These groups will be scheduled on May 2, 2007, unless they request May 7, 2007.

(3) That the official opposition and the third party send the committee clerk a list of groups (with contact information) from whom they would like to hear. The committee clerk will contact the groups and invite them to make a presentation or to send in a written submission.

(4) That the committee clerk, with the authority of the Chair, post information regarding the committee's business on the Ontario parliamentary channel and the committee's website.

(5) That interested people who wish to be considered to make an oral presentation on Bill 184 on Monday, May 7, 2007, should contact the committee clerk by 4 p.m., Wednesday, May 2, 2007.

(6) That on Wednesday, May 2, 2007, the committee clerk supply the subcommittee members with a list of

requests to appear received in response to the information posted on the Ontario parliamentary channel and the committee's web site. This list is to be sent to the subcommittee members electronically.

(7) That if all groups can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties.

(8) That, if required, each of the subcommittee members supply the committee clerk with a prioritized list of the names of witnesses they would like to hear from by 10 a.m., Thursday, May 3, 2007, and that these witnesses must be selected from the original list distributed by the committee clerk to the subcommittee members.

(9) That groups be offered 15 minutes in which to make a presentation. In consultation with the Chair, this time can be reduced to 10 minutes for Monday, May 7, in order to accommodate additional groups.

(10) That the research officer prepare an interim summary of the recommendations heard. This summary will be distributed on Friday, May 4, 2007.

(11) That the deadline for written submissions be 12 noon, Tuesday, May 8, 2007.

(12) That the deadline for filing amendments be Tuesday, May 8, 2007, 12 noon, as per the order of the House dated April 23, 2007.

(13) That the committee hold one day of clause-by-clause consideration on Wednesday, May 9, 2007, as per the order of the House dated April 23, 2007.

(14) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Chair:** Thank you, Mr. Oraziotti. All those in favour? Those opposed? That is carried.

**Mr. Bisson:** Chair, just a quick thing of business. I notice some of our guests are getting a lot of glare from the windows. If we can just draw the curtains a little bit.

**The Chair:** I'm sure we can do that. Just before we proceed, it looks like we could actually extend the time of some of the groups here by about two minutes. We've got three slots this morning, you'll see, that are not confirmed and will not be used. If we could use that and spread it amongst the other groups.

**Mr. Bisson:** Could we ask that that time be used for questions, because, as it is now, it's going to be—



**The Chair:** Yes. I think that's going to happen in any event because the groups came forward expecting to only have 10 minutes and will have 12 or 13 minutes.

**Mr. Bisson:** Okay, but if you could hold them to 10 and then we get some time for questions.

#### ENDANGERED SPECIES ACT, 2007

#### LOI DE 2007 SUR LES ESPÈCES EN VOIE DE DISPARITION

Consideration of Bill 184, An Act to protect species at risk and to make related changes to other Acts / Projet de loi 184, Loi visant à protéger les espèces en péril et à apporter des modifications connexes à d'autres lois.

**The Chair:** Okay. Let's get started. We've got to hear from a lot of people over the next few days.

#### ONTARIO FEDERATION OF ANGLERS AND HUNTERS

**The Chair:** Let's start with the Ontario Federation of Anglers and Hunters, Dr. Terry Quinney and Ed Reid.

**Dr. Terry Quinney:** Good morning.

**The Chair:** Greetings. You originally came thinking you had 10 minutes. You've actually got 12 or 13 minutes now. I can't tell you what to do, obviously, but if you could keep your presentation under 10 minutes and leave some time for questions, that would be great.

**Dr. Quinney:** Sure. Firstly, Mr. Reid sends his regrets. He has a doctor's appointment this morning that I didn't want him to miss.

My presentation to you this morning will consist of four handouts. I'll be referring to four handouts that you either have now or will have shortly. But I'll be specifically referring to the presentation on the blue letterhead. The other handouts we would ask you to read as you deliberate the bill. They consist of a short chronology of the Ontario Federation of Anglers and Hunters' involvement in the review of this bill; secondly, the April 18 formal OFAH submission with reference to the EBR posting associated with this bill. So my brief comments this morning will be highlights from that April 18 more comprehensive seven-page submission.

1010

The final handout that we would ask you to read when you can was from early April, and specifically it was a joint press release from a number of organizations, including the OFAH. In particular, from that handout, extensive reference is made to a recent independent audit of the federal Endangered Species Act. On behalf of my organization, we hope each of the committee members can read that audit in its entirety. It will certainly enlighten, we believe, your deliberations.

Having said that, the Ontario Federation of Anglers and Hunters has participated throughout the review process when the government originally announced its intentions to proceed with Bill 184 approximately a year ago. We've consistently expressed our support for effective

stewardship, protection and recovery of species at risk and habitat, but also doubt that the legislative framework that formed the basis of 184 will actually result in better protection of species at risk and their recovery.

The OFAH and other major resource stakeholders have consistently expressed concerns that the proposed legislation will not result in improved effective conservation and stewardship of species at risk in Ontario, and that it is more likely to result in, quite frankly, increased costs to both governments and the general economy without the corresponding net gains for species at risk.

I'm on page 1 of my presentation and we have some specific comments we would like to pass along this morning. For example, with reference to the described purpose of 184, we agree with the stated purposes of the act; however, the legislation, as proposed, will not serve the stated purpose in at least two major areas.

First, there needs to be a provision within the legislation to ensure that community knowledge is considered at the assessment, listing and recovery strategy planning stages, in the same way that the legislation recognizes that both scientific knowledge and traditional aboriginal knowledge must be considered.

Secondly, there are too many gaps in present scientific knowledge, as well as too little funding committed to 184, to get additional data about species, species occurrence and dependence on habitat to give COSSARO—that committee—virtually unlimited authority to prioritize, assess and list species. The point here is that the science is too uncertain and the social and economic implications of the act potentially too far-reaching to not give the government, for example, through the minister or cabinet, the flexibility in the legislation to refuse to list a species.

Please note that the federal SARA gives the federal cabinet the discretionary authority regarding listing. The federal cabinet has accepted 86% of COSEWIC's scientific recommendations since the passage of SARA, which clearly is not unreasonable. This authority ensures that the government remains accountable and that community knowledge, for example, can and will have a bearing on listing decisions.

I'd now draw your attention to the definitions section of the proposed bill, specifically the "habitat" definition. The definition for the purposes of automatic habitat protection—that is, (b) in the act—in our opinion is too similar to the federal SARA definition, which has proven unworkable for the practitioners. So we recommended an amendment here. We recommended some wording changes; I won't read it in its entirety. Please do so. Our point here is that there is a need to more clearly focus what is too broad a definition of "habitat" in the proposed act.

With reference to the committee on the status of species at risk in Ontario—in other words, COSSARO—we also believe the legislation needs to be amended to make COSSARO's role advisory, to make our provincial cabinet ultimately accountable for weighing the social, the economic, the ecological costs and benefits prior to listing occurring.



With reference to the composition of COSSARO, to fulfill the stated purpose of the act we submit that a third clause needs to be added—that would be subsection 3(4), roughly—that would authorize the minister to appoint to COSSARO qualified persons who could bring critically important community knowledge to bear on the assessment and listing of species. We've provided some wording for you there. But the point is that alongside the biological scientific discipline and aboriginal traditional knowledge, community knowledge needs to be incorporated.

I'm at the bottom of page 3 of my presentation, where we speak to geographic limitation. We submit that the act needs to be amended to limit COSSARO's authority with reference to assessing and listing at the provincial level. As written, the act permits COSSARO to list "geographically distinct" populations of species anywhere in the province. So you can see a real-life situation evolving where, for example, a species is abundant in south-western Ontario but very rare or "endangered" in eastern Ontario, but as written, COSSARO would have the authority to declare that eastern Ontario geographically distinct population listable. Quite frankly, that's not necessary—so, limiting the geographical scope of COSSARO's listing.

On page 4 of my presentation, we speak to the category of the use of "best available scientific information." Here again, the federal species-at-risk experience is very revealing. COSSARO will find that it does not have adequate scientific data on approximately two thirds of the species. We're starting off here in the province with 184 listed species in the act. The federal experience shows that there will be inadequate data for approximately two thirds of those species that are listed in Bill 184; in other words, not knowing what—

**The Chair:** You're down to about three minutes, just so you know. I'm not trying to interfere.

**Dr. Quinney:** Thank you.

Currently, the best available scientific information on many species is not very good, all the more reason why COSSARO must not be given unlimited listing powers. Quite frankly, they wouldn't hold up to the traditional measure of peer review in that regard for scientific validity anyway.

The species-at-risk list proposed for Ontario: This section, which is section 7, I believe, in the act, needs to be rewritten, again to make elected government officials ultimately accountable for the list. The flexibility that we hear certain members of government refer to as a strength of this proposed legislation in our opinion is achieved more pragmatically and more cost-effectively through giving the government, either the minister or cabinet, that ultimate authority to decide not to list a species.

1020

We've spoken to you about the need to further focus that definition of habitat.

In concluding, I just want to refer to the existing sections in the act regarding things like permits, stewardship agreements and other instruments.

With reference to stewardship agreements, we believe in their need and utility and the potential creative flexibility that could be developed through them. We are convinced of the important value of stewardship agreements, but we're very concerned that the limited amount of funding announced for stewardship will prove entirely inadequate and therefore will not result in much more than symbolic, isolated projects, rather than the robust and central pillar of the provincial species-at-risk program.

Stewardship does need to be an essential pillar, and we've consistently argued that, but the act itself provides no assurance that the stewardship program it establishes will accomplish much on the ground for species at risk. This is a point we've been making since the outset of public consultation.

In conclusion, we shouldn't forget that there is already considerable legislation in place to prevent species from becoming endangered in the first place and that the weak link in the species protection chain, if you like, proposed by 184—in other words, preventing species from becoming endangered, to actually recovering them on the ground. Quite frankly, the weak link doesn't occur on the ground, legislatively; it's meaningful incentives for enhanced stewardship that are the key to successful recovery of species.

**The Chair:** You've used up all your time. Thank you very much for coming today. We appreciate it.

## ONTARIO WATERPOWER ASSOCIATION

**The Chair:** The next speaker is Paul Norris, president of the Ontario Waterpower Association. It is the same rules as for the previous speaker. We originally had envisioned 10-minute presentations; it looks like we can extend that to 12 or 13 minutes. If you could save some time at the end for questions from the committee, that's up to you, but I think that would be welcome.

**Mr. Paul Norris:** It would be my preference, as well.

Thank you for the opportunity to speak today to this proposed legislation.

My name is Paul Norris. I'm the president of the Ontario Waterpower Association. We are a non-government organization representing the production and development of the province's primary source of renewable energy.

The blue package that you have amongst others is the package that I'll be speaking to. In that package, you'll find our written submission to the committee—it goes into much more detail than what I'm about to speak to—as well as the three EBR postings we have provided in response to the government's process to consider and introduce legislation.

Given the relative brevity of this opportunity, I've taken the liberty of providing the Chair with an advance copy of the material in your packages.

As you will note, our organization has consistently supported the modernization of Ontario's endangered



species legislative, regulatory and policy frameworks, with an emphasis on species recovery and stewardship.

Throughout the sporadic engagement of our association in this process, we have offered constructive input and advice on how to make the framework work, and I appear before you today with that same intent.

Our submission has proposed 15 specific clause-by-clause improvements.

I'm confident that you will hear today from a number of organizations about the need for a more focused and practical definition of habitat, about the need to ensure that community knowledge is integral to all aspects of the act and its implementation, and about the importance of public accountability. We support all of these recommended improvements, but given the time provided, I want to address what has been suggested to be a key advancement in the proposed legislation: the concept of flexibility tools.

This term has been used to imply a balanced approach to the proposal and is one of the significant improvements over the existing legislation.

In my estimation, comparing Bill 184 and the existing Endangered Species Act is not useful. More productive is the determination of the degree to which the flexibility toolbox, as proposed, is equipped and accessible. I would submit that unless improvements such as those recommended are made, it is neither. Moreover, the current approach risks alienating those expected to be directly involved in implementing broader stewardship and species recovery initiatives. Detailed suggested amendments in the ministerial requirements, permitting, instrument and regulatory sections are outlined in our written submission, as are those for other provisions.

In brief, recommended improvements to the flexibility tools are as follows:

Firstly, section 8, ministerial requirements: In order to provide for a more proactive consideration of listing prior to the passage of regulation, while retaining the integrity of science and improving public accountability, subsection 8(2) should be modified as follows: If a species is, or is proposed to be, listed on the Species at Risk in Ontario list, and the minister is of the opinion that credible scientific information indicates that the existing or proposed classification on the list is not appropriate, the minister may (a) require COSSARO to reconsider the classification and/or (b) seek independent advice in this regard. Moreover, there should be an opportunity through the posting of proposed listings for the public to bring forward such information.

Secondly, section 17, permits: This section and others should incorporate the concept of broader provincial environmental benefit. In considering the issuance of such a permit, the same tests of balance should be applied regardless of the rationale for the application of the tool. In all areas, permit issuance should remain a ministerial decision that is made considerate of, but not in deference to, external expertise. As such, subsection 17(2) should be modified to provide that the minister may issue a permit if (a) the activity will result in significant social,

economic and/or environmental benefit to Ontario, (b) the minister has consulted an expert on the possible effects of the activity on the species, (c) alternatives have been considered and the best alternative chosen and (d) reasonable steps to minimize adverse effects on individual members of the species are required.

Thirdly, section 18, instruments: The same, and significant, test applied to permits should also be brought into consideration of instruments as proposed in section 18. Appropriate modifications to subsection 18(1) would yield the following: An instrument authorizing a person to engage in an activity has the same effect as a permit issued under section 17 if, (a) the activity would result in a significant social, economic and/or environmental benefit to Ontario, (b) reasonable alternatives were considered and the best alternative adopted and (c) reasonable steps to minimize adverse effects on individual members of the species are required. The same provisions would be extended to subsection 18(2).

Finally, section 56, regulation: The regulation-making powers in this section should not be presented as a negative option, but rather a considered tool to be applied in the appropriate circumstances. Subsection 56(1) should be amended as follows: If the minister is of the opinion that a proposal for a regulation that is under consideration in the ministry is likely to have a significant adverse effect on a species that is listed on the Species at Risk in Ontario list, the minister shall (a) confirm that the proposal will result in significant social, economic or environmental benefit to Ontario, (b) consult with an expert on the possible effects of the proposal on the species, (c) consider alternatives to the proposal, including other flexibility tools and (d) ensure reasonable steps to minimize adverse effects on individual members of the species are required.

Applying a consistent approach to the use of flexibility tools will create rigour in the process and foster consistency in the outcome—expectations that I believe are reasonable.

In closing, I want to echo the concerns others are sure to raise about the integrity of the consultation process to date. But as you will see from the materials we have provided for your consideration, our organization has remained committed to the development of effective, responsive and practical endangered species legislation. It is still within this committee's power to produce that result.

Thank you. I would be pleased to take any questions or address any other elements of our written submission.

**The Chair:** Thank you, Mr. Norris. You've left about six minutes. Let's start with the official opposition. Mr. Miller, you've got two minutes.

1030

**Mr. Norm Miller (Parry Sound—Muskoka):** Thank you very much for your presentation today. It's obvious that you've done a lot of work and you could probably spend an hour talking about all the various amendments that you've made. You pointed out right off the top that questioning the quality of the consultation and the ade-



quacy of the consultation, and I would agree with you on that—that obviously through the time allocation motion there's very limited consultation on this bill.

You talked about community knowledge being important, something you would like to see changed in the bill. Maybe you could demonstrate for me or give some examples of how community knowledge would improve the bill and/or improve protection for endangered species.

**Mr. Norris:** I think that when you look at the preamble to the legislation, it's pretty clear that community knowledge is an element that the government, in its design of legislation, recognizes as something important to consider and to bring to the conversation. Very often you will find that the most accurate information in terms of species distribution or species status will be at the community level.

I think we were disappointed, quite frankly, to see that that same kind of general intent wasn't reflected, at least in our opinion, in the bill. We've suggested a number of amendments within the body of the bill that, in our view, would hold the government true to the intent expressed when it introduced the legislation.

**The Chair:** Thank you, Mr. Norris. Mr. Bisson?

**Mr. Bisson:** First of all, I like your presentation. It breaks it out section by section with suggestions on what the rationale was. But I'm going to ask you a much more general question. You're in the business of building power dams. What does this particular bill mean to you if you're trying to build a new power dam?

**Mr. Norris:** Well, that's a good question because we're not yet quite sure what it means to us. There's a lot left in this bill that isn't explained. Our concern is that government, in terms of public accountability, has turned over the requirement for basically writing regulation to a committee. We're not convinced that that committee will have practical science or applied science representation on it. We're certainly more than pleased with the notion of a separate scientific body undertaking the assessments. Right now it's very difficult to determine what the implications may or may not be. What we don't see is any accountability. What we don't see is any reference in the legislation that is strong enough to the use of applied science, and we don't see the emphasis on recovery that we thought we would.

**Mr. Bisson:** You currently have to go through an environmental assessment whenever you develop a new project. How does this juxtapose to the EA process?

**Mr. Norris:** That's a good question. How does it juxtapose with all other pieces of environmental legislation? I don't know.

**The Chair:** Thank you, Mr. Norris. Mr. Orazietti?

**Mr. Orazietti:** Thanks, Mr. Norris, for being here today. I certainly appreciate your thorough presentation. COSSARO, the committee, how do you feel about—in the last presentation, if I can just jump back for a second, there was an emphasis suggesting that the minister have more discretion. Normally people come to these committees and they suggest that the legislation is not tight

enough, that the ministers have too much discretion, that there should be a more scientific basis for decision-making or more of the specifics nailed down in the legislation. In the last presentation, we heard that the minister should have more discretion. How do you feel about the committee making a scientific judgment in terms of whether or not a species is, in fact, at risk?

**Mr. Norris:** Well, we support that entirely. I think everyone will support the role of science in determining the status of a species. What people are concerned about is the delegation of the public accountability responsibility for enforcing regulation based on that assessment. It's the difference between the assessment process and the listing process. I think what you heard from the previous presentation is generally shared as a concern. It's quite different from the federal process.

**Mr. Orazietti:** Do you want to elaborate on that a little more? Are you referring more specifically to costs or compensation or stewardship?

**Mr. Norris:** No. We're referring to the notion that you depend upon science to provide you advice. That advice, then, is something that one would expect in terms of public accountability. The government would exercise its discretion in determining decisions to be made that affect the people of the province.

**The Chair:** Thank you.

## ONTARIO FOREST INDUSTRIES ASSOCIATION

**The Chair:** Our next speaker, then, is Scott Jackson from the Ontario Forest Industries Association. Mr. Jackson, you were here when I explained what we are doing today, the rules?

**Mr. Scott Jackson:** Yes, Mr. Chair.

**The Chair:** The floor is yours, then.

**Mr. Jackson:** Good morning, Mr. Chair and committee members. My name is Scott Jackson and I am the manager of forest policy for the Ontario Forest Industries Association. Our association represents 32 forest companies across Ontario that are the stewards of approximately 75% to 80% of the crown land managed for forestry in the province.

As you are likely aware, several stakeholders, including representatives of major resource and development industries, northern and southern Ontario communities and unions have indicated support for a modernized Endangered Species Act. However, all of these groups have also expressed collective concerns with the current language of Bill 184 as well as the fact that four hours of committee hearings in the city of Toronto will not adequately serve this bill or the people of this province. Therefore, we appreciate the opportunity to present our moderate but critical amendments that will address the concerns of the OFIA, clarify some misinterpretations and answer any questions that members of the committee may have.

Ontario's forest industry has been combating unprecedented challenges over the past three years, includ-



ing issues related to global competition, trade disputes and a high Canadian dollar, but also the impacts of provincial-level policy. Since 2002, Ontario has lost over 9,000 direct high-paying forestry jobs, with over half of these losses occurring in the past 18 months. Using the MNR's job multiplier formula of four to one, Ontario has lost an additional 35,000 indirect forestry jobs. As of December 2006, this Ontario job loss is as much as or more than any other province.

A balance must be struck that meets the needs of species at risk while minimizing the risk to industry, jobs and communities in Ontario as we move forward with this legislation. As currently written, Bill 184 does not achieve this necessary balance.

To state that the OFIA has not been supportive of the government's review of the Endangered Species Act to date is simply not true. The OFIA has been fully supportive of the government's review of the existing Endangered Species Act and, in doing so, provided the Ministry of Natural Resources with the following quote from our president and CEO, Jamie Lim, last April: "Providing for threatened and endangered species is a fundamental element of sustainable forest management. The OFIA supports the development of species-at-risk legislation that is based on sound and credible science, is effective and efficient, and recognizes and complements measures already in place."

Individually and alongside a broadly representative group, many of which are sitting behind me today, the OFIA has strived to work cooperatively and constructively with the government of Ontario. However, Bill 184, as currently written, has the potential to result in reduced access to fibre for our industry, which may ultimately lead to operational curtailment and a loss of jobs. Unfortunately, to date, our modest but fundamental amendments have not been addressed.

Consistent with our recent EBR submission, which is included in your package—it's within the green folder—there are four key issues that need to be addressed. Addressing these concerns will improve the bill's clarity, it will improve the long-term protection for species at risk and it will provide the forest sector with the security and certainty it needs to continue investing in this province.

Equivalency is one of our greatest concerns. The failure of the proposed bill to explicitly recognize the current standards to which forestry in Ontario must comply is unacceptable. We are currently governed by no less than 17 provincial and federal acts, their associated regulations and their associated policies. This includes the Crown Forest Sustainability Act and its regulated manuals. Through these acts, we are already providing for the protection of species at risk. In the government's own words, as contained on the Ministry of Natural Resources website: "The Crown Forest Sustainability Act requires that forest management plans identify threatened and endangered species as 'featured species' and provide for their protection within the area covered by the plan." The OFIA asks the government to recognize its own

statement and explicitly recognize our sustainable forest management practices in Bill 184. The government has suggested that our concern will be addressed through regulation. We urge that any such regulation be developed prior to third reading and voted on simultaneously.

To echo the concerns of some of the speakers who came before me, Bill 184's current definition of "habitat" is exceedingly broad and subject to arbitrary interpretation. The current language could apply to almost anything, and in the opinion of the OFIA and other resource groups has the very real potential to unnecessarily impede operations with no tangible benefits to species at risk.

#### 1040

What is needed is a more site-specific definition that provides for distinct areas of specialized function that are directly relevant for a species' survival. In doing so, we can ensure that the necessary elements of a species' habitat are protected while we develop more comprehensive recovery strategies and regulations.

The proposed Bill 184 does not provide any measure of compensation for landowners or resource users impacted by the legislation. This omission is inconsistent with the federal species-at-risk legislation, which recognizes that protecting species is to the benefit of all citizens and comes at a cost that must be shared by all parties. We urge the government to ensure that investments made by the forestry sector will not be lost or diminished by provisions of Bill 184.

The legislation must allow for representatives with community and practitioner knowledge, and must ensure that both northern and southern Ontario are represented on COSSARO—that's the assessment body. We ask that the bill be amended to explicitly recognize and include members with applied science and community knowledge. It must also prohibit participation from individuals who are associated with special interest, lobby or advocacy groups to ensure independence on the assessment body.

Earlier this year, the OFIA conducted two socioeconomic case studies to determine the potential impact of the proposed bill on Ontario's forest sector. To date, I am unaware of any efforts by the government to do likewise. The results showed that the proposed Bill 184 could pose a significant risk to both fibre supply and wood cost in Ontario. These studies focused on the potential impacts associated with a single species: forest-dwelling woodland caribou.

Case Study A, our first case study, estimated the potential reduction in fibre supply across two management units resulting from the application of the draft recovery strategy for forest-dwelling caribou in Ontario using two scenarios. Under these scenarios, the anticipated reductions in harvest volume ranged from 326,000 to 1.1 million cubic metres per year, respectively.

Using a conversion factor of 3 to 1 jobs per every thousand cubic metres, this translates into a potential loss of 1,009 to 3,477 jobs.



The second case study, B, considered the impact of severe harvest restrictions within the current caribou habitat range on a single management unit and showed reductions in harvest volumes ranging from 277,000 to 490,000 cubic metres per year. This represents a reduction of 38% to 44% respectively from current management standards.

In conclusion, I would just like to say that, by making moderate but fundamental amendments to the proposed Bill 184, government could alleviate these economic concerns as I've just outlined. Until Bill 184 is amended, these are the consequences we could see resulting from the current language contained within the draft legislation.

Ladies and gentlemen of the committee, there are 230,000 families in Ontario who rely on the forest industry for their well-being and livelihood. They are counting on all of us to get Bill 184 right. Thank you.

**The Chair:** Thank you, Scott. You've left about four minutes, probably time for a very quick question from each party, starting with Gilles.

**Mr. Bisson:** Very quickly, we went through a forest EA for five years. The forest EA was about trying to figure out how we can basically sustain forestry but not impact, in the end, the environment. We went through the sustainable forestry development act. What comes out of that is a pile of manuals this big that you have to prepare forest management plans. Where does that legislation put you in relationship to what you're already doing under your forest management plan?

**Mr. Jackson:** To reiterate the comments I've already expressed, we are already protecting and providing for species at risk through existing legislation, their associated manuals, regulations and policies. You've highlighted clearly two of the most critical, which are the Environmental Assessment Act of Ontario and the Crown Forest Sustainability Act. The government itself, again, recognizes this on its own Ministry of Natural Resources website. Why can't they reflect that in the legislation itself?

**The Chair:** Mr. Oraziatti.

**Mr. Oraziatti:** Thank you very much for your presentation. As you are aware, we have a growing number of species at risk and a growing number of those species becoming extinct. What kinds of things do you think we can do in this bill that will help to strengthen the legislation to address this issue?

**Mr. Jackson:** I guess first I'd like to address the comment that we do have a growing number of species at risk: I don't disagree with that. In northern Ontario, in the area currently managed on crown land for forest operations, we've actually seen some reductions in the number of species at risk. There are seven, including bald eagle, that have shown a dramatic recovery. Bald eagle is currently considered endangered in southern Ontario but, oddly enough, not in northern Ontario.

Again, we have always supported the concept of updating the 1971 Endangered Species Act; that's why we gave the quote last April. But when it comes to forest operations on crown land, we have already gone through

the processes, through all the public hearings, through years and years of scientific testimony, to arrive at the management system we have. I think the best opportunity is to continue with that system and allow it to operate without bogging it down with additional processes and red tape.

**Mr. Miller:** I have three questions, but I only get time for one, so I'll go to the one about regulations.

I met with a forester last week, and he wasn't slamming the bill, but he said it's really going to come down to the regulations. He pointed out that the Crown Forest Sustainability Act is the one that already regulates you on crown land and that this will probably apply more to private land. Really, the regulations are where the rubber meets the road, where things could get ugly, I guess you'd say.

You want more review. What recommendations would you make for review of the regulations before they're actually put into effect, and what are your recommendations for interim habitat—because the bill is pretty definite about protection of habitat when a species is listed.

**Mr. Jackson:** I think with regard to the development of the regulations, it goes back to my point of equivalency. The single most important thing the government can do—and we would prefer to see this in the legislation itself—is recognize what we are already doing to protect and provide for the recovery of species at risk; we have been told that that will be addressed through regulation, but until we actually see that, we have no security and we have no certainty for the investments the forest industry might make in this province. So what we are asking is for that regulation to be developed; if the government chooses to move it through regulation, that it be developed and passed simultaneously with third reading of this legislation.

With respect to the definition of habitat, as I mentioned, it's a very broad—

**Mr. Miller:** The interim habitat.

**Mr. Jackson:** Yes. The interim habitat definition is very broad and there are numerous circumstances where habitat may not be the governing factor associated with the recovery of a species at risk. There's disease, there are invasive species. In a sense, the proposed definition is far too broad. It essentially tries to paint everything with a single brush and moves away from what our association believes is the fundamental intent of this act: to develop species-specific recovery strategies.

**Mr. Miller:** So you're suggesting more flexibility in interim habitat protection?

**Mr. Jackson:** Yes. I would say less of a broad sweep of prohibitive language.

**The Chair:** Thank you very much for coming here today.

#### ONTARIO MINING ASSOCIATION

**The Chair:** We'll move on to Mr. Chris Hodgson of the Ontario Mining Association. Mr. Hodgson, you were here at the start.



**Mr. Chris Hodgson:** Yes.

**The Chair:** You know what time limits you're operating under, then.

**Mr. Hodgson:** I'll try to finish up so we have time for questions.

**The Chair:** Perfect.

**Mr. Hodgson:** Good morning. My name is Chris Hodgson. I'm the president of the Ontario Mining Association. With me today is Adrianna Stech, OMA's manager of environment and sustainability.

We very much appreciate the opportunity to appear today to address Bill 184, the Endangered Species Act, 2007, which has the potential to considerably impact the activities of OMA members as well as members of the exploration industry in Ontario. In fact, the views I'm expressing today also reflect the position of the Ontario Prospectors Association.

The OPA represents the prospectors and geoscientists who lead the front-line mineral exploration in the province. The OPA believes strongly in conservation and protecting and helping species at risk. Just like the mining community, the prospectors want the processes to be put in place correctly.

The OMA represents mining companies engaged in the environmentally responsible exploration, production and processing of minerals in Ontario. We have a long history of working in concert with the government to ensure that the mining industry in this province is competitive and that Ontario is a leader in environmental protection. Our members have a vested interest in this. After all, they and their families benefit from the natural bounty and biodiversity of this province.

Needless to say, our members are supportive of the intent to conserve and recover species at risk in Ontario. We have demonstrated our commitment by joining with other resource stewardship and development groups to work constructively with Ministry of Natural Resources staff on finding a truly effective approach to addressing species at risk.

Throughout this process, our greatest concern has been, and still is, that the approach taken by the minister, while noble in its intent, risks putting democracy at risk in Ontario.

Under the current draft, recommendations made by the committee on the status of species at risk in Ontario, COSSARO, will lead to automatic listing, triggering species and habitat protection under the legislation. Because of the far-reaching implications of habitat protection, the decisions of COSSARO could affect the livelihood and quality of life of hundreds of families in this province, yet COSSARO is envisioned as an independent scientific body that is in no way accountable to the public.

1050

This contradicts the basic tenets of government transparency and accountability. Balanced decision-making requires appropriate consultation and a ministerial role. The people of Ontario expect to be able to hold their elected representatives accountable, particularly for deci-

sions that can profoundly affect their prosperity and quality of life.

I am confident that you will hear today from a number of groups—and you already have—calling for a more focused definition of habitat, about the need to preserve the scientific integrity and independence of COSSARO, as well as other constructive suggestions to improve the bill. The OMA has offered similar suggestions in previous consultations and written submissions.

Given the limited amount of time we have here today, we would like to limit our comments to what we believe is the heart of the matter: Democratic principles cannot be put at risk, no matter how noble the cause.

It is essential that COSSARO recommendations are subject to review and debate and that elected officials retain ultimate decision-making authority and accountability for the listing of species. Given thorough and independent scientific analysis and appropriate opportunities for public comment at the species assessment stage, there should be no difficulty with building consensus to reach a final decision regarding the listing of species and their designation on the Species at Risk in Ontario list.

By way of conclusion, I'd like to stress that OMA and OPA members remain committed to the conservation and recovery of species at risk in Ontario, and we applaud the ministry's efforts to make improvements to the systems currently in place. However, we believe that the proposed legislation needs further refinement if democratic processes are to be respected and on-the-ground implementation is to occur in an effective manner. We welcome further opportunities to work with the government to ensure that the legislative proposal is an effective tool for protecting species at risk, while preserving the one principle that works for people and the environment, and that is, democracy.

**The Chair:** Thank you. You've left between six and seven minutes for questions. We'll start with the government side.

**Mr. Oraziotti:** Thank you for being here this morning, and thank you for your presentation.

I'm getting some mixed signals this morning about the role of COSSARO and the role of the minister, in comparison, in terms of providing the scientific information that would in fact identify species being at risk. Do you want to elaborate on that a bit more? I'm getting the sense that—and you're probably familiar with this—when groups present, they often suggest that the minister has too much discretion in legislation or in regulation and there's not enough weight given to scientific evidence or that specifics are not nailed down in the legislation. Is that not the case in this particular bill? That's question number one.

Also, do you have any other suggestions in terms of how we might move forward and protect species at risk in the province of Ontario?

**Mr. Hodgson:** I want to be very clear. We're not talking about a thing that can be fixed at regulation stage. We think it's a fundamental principle that the minister should be accountable and have to sign off.



COSSARO is an appointment by the Lieutenant Governor in Council. In democracy, the spoils of victory go to the winners. So you appoint the committee—we'll trust that you put the proper scientific people in place, and that's fine—and they make recommendations on what should be protected.

Under this proposed bill, they have the ultimate authority. The minister doesn't have a sign-off or a say in this until after. The interim protection could affect hundreds of families immediately. You don't even give that power to a coroner's inquest.

I don't understand why you would set up a system that hasn't worked in other places in the world.

Democracy has served the environment and the people well; if you do it right, upfront, you should have a consensus.

I can understand people saying that there's some urgency. For what other good cause are you going to do away with the principle of accountability and ministerial sign-off? You're handing over ultimate authority to a group of people without any check in the system.

**Mr. Oraziotti:** I think the point of the committee is to simply identify, based on scientific evidence—

**Mr. Hodgson:** No. That's the fundamental problem we've got here. It's an automatic listing. If it was that, we'd support it. That's fine. That's the way it should work. It should be advice to the government.

**Mr. Miller:** Thank you for presenting this morning.

In terms of the COSSARO listing, would it be an improvement if it was peer-reviewed science? We've had some other groups that have talked about having community knowledge or applied science members on the COSSARO committee. Would either of those things help? So COSSARO makes their recommendation and then another group of peers reviews it; would that be an improvement?

**Mr. Hodgson:** No. All that has to happen is that the minister has to sign off on the listing. There's a process in place then that's accountable. People would have a debate about it. The minister would stand up and defend the position in public and be accountable for it. There are lots of suggestions on how to make COSSARO better, but that's not our fundamental problem with the bill.

**Mr. Miller:** I think Mr. Yakabuski wants to ask a question.

**Mr. John Yakabuski (Renfrew-Nipissing-Pembroke):** Thank you for coming this morning. To what extent prior to the tabling of this bill was the Ontario Mining Association consulted with regard to the legislation that we knew was coming at some time?

**Mr. Hodgson:** Oh, quite extensively. The Ministry of Natural Resources staff have been more than helpful and accommodating on listening to concerns. Quite frankly, there are a lot of improvements in this bill over the status quo, which we support. Our fundamental problem is that no matter how noble the cause, there should still be democratic principles applied, where the minister has to explain to the public, to these families that are affected

why he's listing and putting in habitat protection, with all the ramifications included in that. I don't think that's too high a threshold in a democratic society.

**Mr. Yakabuski:** So the ultimate accountability has to be the government. You can't simply walk away and say, "It wasn't our decision. Somebody else made it. We can't do anything about it."

**Mr. Hodgson:** Right. No matter how noble the cause, I don't think we should sacrifice that principle. We don't do it for inquests of babies dying in hospitals. We have coroner's inquests and make recommendations, and then the government, through the minister and the cabinet and the House, decides if they will implement those recommendations. I don't think you should fear to have it. I think it's a principle that has stood well the test of time.

**The Chair:** Thank you. Point well made. Mr. Bisson?

**Mr. Bisson:** That is actually quite a good point; that's a good way of putting it.

The inter-protection of habitat: Can you explain what that means? If there was a recommendation to take out of the land mass available for exploration, what would that mean for the exploration industry and ultimately what that means to northern communities?

**Mr. Hodgson:** It could mean anything. It would depend on COSSARO's recommendations and the geographic scope of what they consider needs to be off limits for various activities. We're not sure what it means. We don't disagree with the idea that COSSARO should be set up and make recommendations, and if they do consensus-building and explain their scientific position well, the minister should have no trouble implementing the recommendations. Our problem is that you're going to hand it over without a check of the public having a say through their elected representatives.

**Mr. Bisson:** If an amendment was supported by the government majority that in fact the minister would have the final say, would you be supportive of this legislation?

**Mr. Hodgson:** Yes. I think the rest of the issues we can work through and improve upon, but those are details. This is a fundamental issue that can't be addressed at the regulation stage. This is a fundamental tenet of the bill.

**Mr. Bisson:** Are you satisfied that, the way the current legislation is written, the COSSARO committee will be representing fairly the various regions of the province?

**Mr. Hodgson:** Well, to the victor go the spoils. The government will be accountable for who they appoint on these committees. I'm not so worried about that. It would be nice to try to pre-select them and say they're going to be infallible, but they're going to be people who are sitting on this committee, and that will be a judgment call by the government of the day of who would best represent endangered species and have the scientific background to do an adequate and professional job.

**The Chair:** Thank you, Mr. Hodgson. Your time is up. Thank you very much.



## ONTARIO FUR MANAGERS FEDERATION

**The Chair:** The next group we're going to hear from is the Ontario Fur Managers Federation, Stewart Frerotte and Howard Noseworthy.

**Mr. Howard Noseworthy:** Good morning.

**The Chair:** Good morning. Were you here at the start when we outlined some of the rules and time constraints?

**Mr. Noseworthy:** We've got the rules down pat now.

**The Chair:** There you go. It's all yours.

**Mr. Noseworthy:** My name is Howard Noseworthy. I'm the general manager of the Ontario Fur Managers Federation.

**Mr. Stewart Frerotte:** And my name is Stewart Frerotte. I'm the southern region vice-president for the federation.

**Mr. Noseworthy:** The Ontario Fur Managers Federation and our 5,000 members appreciate this opportunity to present our recommendations to the committee. We must express our disappointment that committee hearings have been confined to Toronto when so many individuals and local associations whose activities may be directly impacted by any restrictions that may be imposed by Bill 184 are resident in the beautiful communities of rural and northern Ontario. All of them have concerns that are particular to their own areas and circumstances, and many of them feel that their concerns have not been adequately addressed in the limited public consultation process to date. In the limited time available to us, we will attempt to summarize the major concerns of our thousands of members and dozens of local trappers' councils, but know that many stories will remain untold.

1100

The Ontario Fur Managers Federation supports conservation and recovery of threatened and endangered species that are based on the concepts of sustainable development and use of natural resources. Unfortunately, Bill 184 offers only ambiguous protection for endangered species and their habitats, while stopping short of a process that will lead to the recovery of these species for the benefit of Ontarians. In so doing, Bill 184 also ignores socio-economic implications for Ontario's citizens.

One of our chief concerns lies with the definition of "habitat" contained within section 2 of the act. We believe that the majority of our citizens want to comply with the requirements of the legislation, but the imprecision of the current definition will make compliance difficult, if not impossible. We know that MNR staff and the minister's office have seen a variety of proposed "habitat" definitions from concerned stakeholders, and we would add our suggestion here.

In definitions, section 2 of the act, we would suggest that in this act "habitat" means,

"(a) with respect to a species of animal, plant or other organism for which a regulation made under clause 54(1)(a) is in force, the area prescribed by that regulation as the habitat of the species, including, with respect to a species of animal, places in that area that are used by

members of the species as dens, nests, hibernacula or other residences, or

"(b) with respect to any other species of animal, plant or other organism, an area on which the species depends to carry on its critical life processes, including, with respect to a species of animal, places that are used by members of the species as dens, nests, hibernacula or other residences; but not including an area on which the species does not depend where the species formerly occurred or has the potential to be reintroduced;"

Subsection 10(1) of the act requires that no person shall damage or destroy the habitat of endangered or threatened species, but does not define such damage or destruction. The act should acknowledge that alteration of habitat that does not have a deleterious effect on a species would not be considered to be damage or destruction.

In addition to the foregoing, the act should acknowledge the temporal nature of many species' residences, inasmuch as many species do not return to the same residences annually, and should therefore provide for this aspect of habitat protection only during the period of residence occupancy.

The advisory panel acknowledged that "it is widely recognized that habitat loss, through elimination or degradation, is the leading cause of species endangerment." This said, the act should not engender the premise that habitat protection is equivalent to a hands-off approach. Rather, the act should acknowledge that the concept of habitat loss through elimination or degradation may require the active intervention of habitat manipulation and enhancement.

The act should acknowledge that threatened and endangered species are best protected through the implementation of timely and effective recovery strategies and recovery plans, and the act should make such strategies and plans a prerequisite of habitat protection beyond a species residence.

The act should provide that species-specific habitat regulations be guided by recovery strategies and plans, and as such only take effect with the implementation of a recovery plan.

This act has only two purposes, the first of which is, "To identify species at risk based on the best available scientific information, including information obtained from community knowledge and aboriginal traditional knowledge." One would consider that in an act with only two purposes, these purposes would be truly overriding and incredibly important. It is therefore discomfiting that the qualification for membership on COSSARO, as outlined in subsection 3(4), completely ignores one third of the body of knowledge that is so properly included in the first purpose, that being community knowledge.

We contend that it can be accurately stated, especially for species with limited geographic distribution, that relevant expertise pertaining to such species may rest primarily with those persons with intimate community knowledge of such species. Indeed, the stewardship roles undertaken in relation to threatened and endangered



species over many years by members of the public may provide them with an expertise that exceeds that of those from a formal scientific discipline.

We encourage that subsection 3(4) be amended to include community knowledge as follows: under “Qualification,” the bill as written, with sections 4(a) and (b), and the addition of a 4(c), that being community knowledge.

The COSSARO appointment process should include a terms of reference that exclude those who are opposed to the sustainable development and use of natural resources.

Section 47 provides that “subject to the approval of the Lieutenant Governor in Council, the minister may establish a committee to make recommendations to the minister” on a range of matters, including stewardship, best management practices, education, agreements and regulations.

We contend that recovery of species at risk in Ontario will only occur if such a committee is established. To that end, we recommend the following: In section 47, “the minister shall establish a committee to make recommendations to the minister” on any matter that relates to (a) through (j), as currently written in Bill 184.

As recommended by the advisory panel, the assessment and listing processes should not be “accompanied by a rigid protection system that ignores the important socio-economic factors that may affect decisions about how a species will be protected and what exceptions will be made.” In keeping with this concept, we would suggest that section 47 be amended to include a section (j), which would be:

“(j) socio-economic factors that may affect decisions about how a species will be protected and what exceptions will be made.”

We further recommend that membership on the committee be primarily from Ontario’s resource stewardship and land management sectors, with participation from the Ministry of Natural Resources.

COSSARO’s role in the listing and de-listing of species should be as a body advisory to the minister. The minister should ultimately be responsible for listing and de-listing of species.

The act, as envisioned, would be truly dynamic legislation, with each species listing bringing with it legislative and regulatory requirements, which would include potential penalties for Ontario’s citizens. As such, only those accountable to the people should be responsible for listing.

To reiterate, in keeping with the democratic principle and public trust, government must ultimately be accountable to the people of Ontario for the introduction of legislation and regulation, including amendments, that place the burden of responsibility and potential penalty on the public. COSSARO, as an appointed body, should be advisory only, and is not an appropriate entity to decide the legal status of species.

The act should include an open and transparent process, via 60-day EBR postings, to advise the public of species to be considered for assessment, and a similar 60-

day EBR posting to advise the public of the intention to list a species.

At this time, we would be pleased to answer any questions the committee might have.

**The Chair:** Thank you very much. We’ve got about two minutes left. Mr. Miller, you’re starting off. Mr. Bisson, do you have questions, or do you want to give it all to the opposition?

**Mr. Bisson:** I’ve got one quick question.

**The Chair:** Okay. Mr. Miller?

**Mr. Miller:** I have a number of questions, but I’ll just ask one quick one. On the community knowledge aspect of it, you’re recommending that there be people with community knowledge on the COSSARO committee. How do you practically implement that? I’m assuming the committee would be eight or 10 people, for example, so how do you pick what community knowledge and how many people etc.?

**Mr. Noseworthy:** As Mr. Hodgson suggested, I guess it will ultimately be government or the minister who decides who. But it’s a process not unlike what we currently have in recovery teams for threatened and endangered species in this province now. I sit on the provincial wolverine recovery team, and I happen to believe that we have an excellent balance of scientific, aboriginal and community knowledge. I think it would be completely inappropriate to exclude one third of that body of knowledge from the process.

1110

**Mr. Bisson:** Just a quick question: How do you juxtapose allowing for socio-economic factors to be considered when it comes to protecting habitat versus the environmental need?

**Mr. Noseworthy:** I would like to think that protection of species and the ability to harvest the natural resources of this province need not be mutually exclusive. I don’t see it as one side or the other wins, but rather a process by which it is determined how we harvest the resources while still protecting the species.

**The Chair:** Mr. Oraziatti, one quick question.

**Mr. Oraziatti:** This issue of automatic listing and COSSARO has come up a couple of times this morning. Would you not say that this is a scientific issue and that this isn’t something that the minister should be deciding; that based on science, the species is either endangered or not endangered?

**Mr. Frerotte:** I can answer that. I have some problems in that area, in that there is a penalty section in the act itself. If you’re going to impose a penalty on me, I want to be able to hold the minister or the government in power to account for it if it’s a wrongful penalty or something along those lines. If we were to just turn around and say that a body of 10 people can automatically list something and then I could commit an offence against that—I can’t hold them accountable. It’s the accountability aspect, primarily, in that area. Somebody has to be at the top and be accountable to the public and the province.



**The Chair:** Thank you very much for attending today; thank you for your presentation.

GREATER TORONTO  
HOME BUILDERS' ASSOCIATION—  
URBAN DEVELOPMENT INSTITUTE

**The Chair:** We'll go on to the Greater Toronto Home Builders' Association and UDI. Neil Rodgers and Jessica Annis, welcome to the committee. The floor is all yours.

**Mr. Neil Rodgers:** My name is Neil Rodgers. I'm the vice-president of policy and government relations with the Greater Toronto Home Builders' Association and Urban Development Institute. Joining me is Jessica Annis, a senior policy adviser with the association.

The GTHBA and UDI's 1,500 members significantly contribute to the provincial economy and its quality of life. The development and residential and commercial construction industry employs over 350,000 men and women in this province directly in the industry and many hundreds of thousands more in related and accessory businesses.

We are pleased to be afforded this opportunity to present the industry's views with respect to Bill 184. However, we must state for the record that we are disappointed with the government's refusal to undertake province-wide consultations and respectfully submit that four hours of committee hearings in the city of Toronto will not do this bill the justice that it deserves.

Our association is supportive of a legislative regime that protects threatened and endangered species, with an emphasis on species recovery, flexibility tools and stewardship. We have worked hard, along with other resource sector stakeholders, to offer the minister ideas and policy alternatives that would protect species at risk while balancing the social and economic interests of this province's residents and businesses.

Unfortunately, the bill only offers ambiguous protection for endangered species and their habitat, while stopping short of a process that will lead to the recovery of these species for the benefit of all Ontarians.

We submit that the definition of "habitat" included within the bill, as currently drafted and intended to be used to define areas that are to be protected so that populations of species identified as threatened or endangered are maintained at existing levels in the interim while recovery strategies, management plans and regulations are developed, is ambiguous and vague.

We are concerned that the definition will be interpreted so broadly as to render it meaningless, specifically with respect to the lack of understanding of the meaning of "indirect habitat."

We believe that a species-specific regulation is more appropriate to address the particular habitat protection needs of species designated as being at risk.

Therefore, we would recommend that the definition of "habitat" in clause 2(b) of the bill be amended to read as follows:

"(b) With respect to any other species of animal, plant or other organism, distinct area(s) of specialized function on which the species directly depends to carry on its critical life processes including places that are used by members of the species as dens, nests, hibernacula or other residences, but not including an area on which the species does not directly depend, generalized areas or areas where the species formerly occurred or has the potential to be reintroduced;"

We also have a concern with respect to the integration of this bill with the provincial policy statement. The PPS, which came into effect on March 1, 2005, and Bill 184, as currently drafted, contain two vastly different and perhaps conflicting tests with respect to the determination of activities that would potentially be allowed to occur within the habitat of threatened or endangered species.

Clause 2.1.3(a) of the PPS, which is reproduced below, establishes a general prohibition against development and site alterations, whereas the tests established in Bill 184 are, for the most part, founded on a "net gain" or "no net loss" approach.

Ontario's development and building industry invests significant resources in the restoration of degraded and marginal lands and watercourses, and is familiar with the concepts of net gain and no net loss embedded within the bill. We support the establishment of the flexibility tools within the proposed bill, which, if implemented correctly, have the potential to facilitate overall gains for species at risk and their habitat.

The establishment of two very different and potentially conflicting tests will, in our opinion, cause enormous confusion for decision-makers at all levels of government, resulting in variable and unpredictable interpretation across the province. The lack of clarity and certainty this will cause is of significant concern to our members.

We therefore recommend that the bill be amended to clarify that regulations, agreements, permits and other instruments made under the act prevail in the event of a conflict with the provisions of the PPS, as may be amended from time to time.

With respect to COSSARO, we are troubled by the removal of ministerial discretion and decision-making with respect to the inclusion of species on the Species at Risk in Ontario list and the associated delegation of decision-making authority to an appointed body—COSSARO—which is not accountable to the electorate for its decisions.

While we acknowledge the inclusion of the word "independent" in subsection 3(5) of the bill with respect to the members of COSSARO, we submit that since it is the intention of the government to grant COSSARO extensive decision-making powers through this legislation, a more rigorous test with respect to potential conflicts of interest needs to be incorporated into the bill.

We would therefore recommend that the following be included within section 3:

"No member shall, during their term of membership, be in a position of advocacy related to public policy of real or perceived interest to the functions of COSSARO."



On the issue of timelines, expanding government mandates and increasingly complicated decision-making processes at all levels of government have contributed significantly to the development approvals process. The process to obtain a permit, as outlined generally in section 17 of the bill could, in our opinion, significantly delay and, in particular, unduly defer the construction and renewal of necessary and critical public infrastructure projects.

We are concerned that the process envisioned in the bill will not result in ministerial decision-making being undertaken in a timely manner. We therefore recommend that the bill be amended to include reasonable timelines within which the minister, or his or her designate, would be required to issue an opinion/decision regarding an application for a permit.

On the issue of equivalency, our industry is governed by innumerable intersecting pieces of legislation and regulation at all levels of government. It has been the industry's experience that new requirements are often not well integrated with existing legislation and regulation, with overlapping mandates, particularly those of other government agencies. In a number of cases, this has resulted in applicants being unable to satisfy conflicting approval requirements, causing significant delays and unnecessary duplication of work.

1120

Currently, Fisheries and Oceans Canada, DFO, through the Fisheries Act, rigorously regulates any and all development activity that impacts fish and fish habitats in this province. In our opinion, an additional layer of approvals required for activities that may potentially impact fish and fish habitat deemed to be at risk will increase costs and delay without benefiting, necessarily, fish species that have been deemed to be at risk. We therefore recommend that the bill be amended to specify that an authorization granted by DFO be deemed to have the same effect as a permit issued pursuant to section 17 by the minister under the bill.

Our recommendations above are intended to assist the government to strengthen Bill 184, and to ensure that the significant investments made by the development and building industry in this province will be directed toward on-the-ground solutions, rather than additional process and red tape.

Thank you, Mr. Chair.

**The Chair:** Thank you very much, Mr. Rodgers. You've left just over three minutes, starting with the NDP, for questions.

**Mr. Bisson:** Two minutes each you said?

**The Chair:** Well, about a minute and a half each.

**Mr. Bisson:** Thank you for your presentation; it's much appreciated. Many of the people who have presented to us, clearly the majority of them, have been saying that we need to give some ministerial discretion to what COSSARO is able to recommend back. What do you say to those people who would be in opposition to that? Clearly, there's a different point of view that it should be strictly scientific, as Mr. Orazietti has put forward. What do you say to that?

**Mr. Rodgers:** I think the push by other parties to have ministerial discretion taken out of the system is because they perhaps don't have confidence in the process of government, the process of ministers. Quite frankly, that is a slippery slope on which to embark as a democracy. There are ways and means in which you can deal with the accountability and the decisions that governments make, and I think that process has been tested very well.

**Mr. Bisson:** And in regard to the issue of the makeup of COSSARO itself, are you satisfied, under the current legislation as drafted, that COSSARO is a good mix in the way it's going to be put together?

**Mr. Rodgers:** At this time, I can't answer unequivocally yes. There are some issues with respect to the qualifications of the members. It will be a work in progress. We have no objection to the independence of a scientific body offering advice to government, but the proposal that's in this bill goes way too far.

**Mr. Orazietti:** Thank you for your presentation. One of the questions has been asked. Is there anything else that you might suggest today that will help us address this issue of species at risk in the province of Ontario, anything else that you could suggest that would help us strengthen this bill?

**Mr. Rodgers:** I think we've made a number of suggestions, as have many of the presenters here before. There's been no lack of opportunity in terms of staff discussions with the sector; we cannot complain about that. We just haven't seen, quite frankly, the practical solutions that many have offered reflected in the bill.

**Mr. Orazietti:** All right. Thank you.

**The Chair:** Mr. Yakabuski?

**Mr. Yakabuski:** Thank you very much for joining us today, Mr. Rodgers. I'm of the opinion that regardless of what side of any fence you sit on, there are no objective people in this world; everybody has a view. One of the concerns, it would seem, that you have is the makeup of the committee, COSSARO, and with regard to how to find people who are absolutely, totally objective. One of your proposals is that no one who has been in a position of advocacy would therefore be eligible for that committee, and I understand where you're coming from. I certainly understand your views on that, and share that there is a concern that without accountability on the part of the minister, in fact the government is ceding its responsibility to another body, and in a democracy we don't know where that could end up. I understand your position on that.

I also wanted to talk about one thing: Number four, the timelines. Is this a concern that if we don't have timelines, then we've got a situation where we're just in perpetual limbo with regard to can we proceed, do we proceed? Inevitably, that adds to the cost of any and every project.

**Mr. Rodgers:** Yes. I have read into section 17, particularly 17(d), a process that will be similar to, if not equal to, the environmental assessment approvals process. So our concern is that if the minister makes a decision and says that we have to take a pause and we



have to look at it, and there's a whole series of tests by which the government of the day will have to do that, it could be caught in a bureaucratic limbo. Our concern, and I think the concern of legislators across this province, should be for the issues of infrastructure renewal and new infrastructure that is needed for the economic output of this province. It's a significant problem and I don't think we have really tested how this could play out.

**Mr. Yakabuski:** It's clear that there's a number of issues here—

**The Chair:** Thank you, Mr. Rodgers and Ms. Annis. Mr. Yakabuski, thank you.

#### TOWNSHIP OF TERRACE BAY

**The Chair:** Our next delegation is Mayor Michael King from the township of Terrace Bay. Mayor King, if you'd come forward.

**Mr. Michael King:** Thank you, Mr. Chair. I want to give my appreciation to the committee for allowing me to present here today. I guess I'll start off by just telling the committee a little bit about myself. I am the mayor of the township of Terrace Bay and I'd like everyone to know what a terrific community that is, right on the north shore of Lake Superior.

Terrace Bay has been around for about 60 years and we are a forest-based community. We have a pulp mill. Our community was built specifically to house a pulp mill. Back in the 1940s, it was started by the Longlac Pulp and Paper Company and later, Kimberly-Clark. It's a beautiful community that was planned specifically and serves no other purpose than to house a pulp mill. Our community is made up of ordinary folk, like every other community. We've got a lot of seniors, pensioners and working people, and the only employment is our pulp mill.

A year ago, the economies of Terrace Bay and other forestry-dependent communities were devastated by the closure of the Neenah Paper pulp mill. Thanks to the Ministry of Natural Resources, Terrace Bay Pulp Inc. is now operating and these communities are revitalized. The impacts of implementing the recovery strategies associated with SARA will challenge the future operation of the pulp mill and threaten the futures of these communities.

I've been the mayor of this community for almost 10 years. We've gone through a significant, traumatic experience with the mill being closed once, looking into the faces of my residents, whose futures were so uncertain.

Existing protection for species at risk: The Ontario forest management planning process and its associated guides provide an exemplary level of protection for species at risk and all other wildlife and values on crown land. For example, the recently developed landscape guides were designed to provide habitat for all species, especially those at risk.

Impacts of recovery strategies: They will have economic impacts for people, communities and industries

in the north. Wood supply and wood costs will be impacted by the recovery strategies. Socio-economic impacts have not been calculated. It is critical that each new recovery strategy, including the newly drafted caribou recovery strategy, is subject to a socio-economic assessment.

1130

I have provided you with a map of northwestern Ontario. The copies that I had were in colour. Basically, the impact of just the caribou recovery strategy east of Lake Nipigon is very significant. You will note on the map that the area in pink was the original caribou protected area implemented in 1990. That's a very significant amount of territory in northwestern Ontario.

**Mr. Yakabuski:** I'm sorry, could you turn that map this way? Our area is not in pink.

**Mr. King:** I'm sorry. That's this entire area right here.

**Mr. Yakabuski:** Thank you.

**Mr. King:** That's the one from 1990. The impact of just that strategy reduced the amount of fibre available to the forest industry by three million cubic metres of conifer annually.

In the proposed boreal caribou recovery zones, there has been an addition to it, and it is all of these other coloured areas. They go right down—this yellow area, as well as the area surrounding Lake Nipigon, and all along the North Shore of Lake Superior, which includes my community.

Currently, the forest industry in Ontario needs almost nine million cubic metres of conifer annually. In 1990, there were 14 million cubic metres. With the introduction of that caribou legislation, it was reduced by three million cubic metres, and there have been further reductions in available conifer by other legislation. The number sits at 9.5 million cubic metres annually available to the industry.

If we suffer another withdrawal, it must translate to closures of mills and devastation of communities. Our community and other communities saw their mills close; we knew that that was due to the perfect economic storm, and none of us, not one, blames the government. It was the high cost of the Canadian dollar. It was the low cost of product. It was competition from foreign markets. It was energy costs. Some of these mills run on 100% natural gas, and the cost of gas to produce their power put their lights out. We never blamed the government.

Our fear is that if this remains unchanged, this time mills will be closed for lack of fibre by an act of government; we get all kinds of assurances that that won't happen, but we have a very thin threshold of withdrawals. If this committee and this government can state categorically that there will be no fibre withdrawals, that would give us some comfort that this result would not happen, but I don't think that's going to happen.

We're talking about protecting habitat. A significant amount of caribou habitat is being protected today. Why do you need so much more? There are several pulp mills and a large number of sawmills in communities within



the new expanded area, and all of them will be put at risk if there's a further withdrawal.

Two years ago, myself and a number of other mayors were invited to a seminar. The entire thing was organized by high school students in Red Rock—children. It lasted two days. The name of the seminar was Face the Truth, because their pulp mill was in trouble, and so were so many others. Two days of presentations, organized by children. My panel consisted of four mayors. We told them, "Yes, our mills are in trouble; the trees are fine." I was never so proud of a group of children as I was that day. I feel somewhat ashamed today; the Red Rock mill was closed permanently. All of us are working desperately to find a new investor or to convince the current company to reopen it. But as it stands, the community is devastated. There is no other employment. We told the children, "The trees are fine." In other words, we can find someone else. I feel somewhat ashamed for telling them that, because now I'm not so sure we can do it.

I'm open for questions.

**The Chair:** Thank you, Mayor King. You've left a very short amount of time. We're going to start with the government side.

**Mr. Oraziotti:** I just want to make a comment. I want to thank Mayor King for coming to present to us today, and I appreciate hearing first-hand from you about your community and about the challenges that you faced, and successfully enough, it's on the rebound. That's fantastic news, and I'm happy to hear that.

Let me reiterate that this piece of legislation and the updating of a bill that is 36 years old is to allow us, as a province, to identify species at risk—additional species that are not protected—and work to make those improvements and ensure that we are protecting the species and habitats in the province of Ontario. There are flexibility tools built into this legislation that will continue to evolve as we work through the process and work with communities like yours, or other areas, to ensure that we balance the very important economic priorities of this province that we all have and that we all want to see perform very well.

I want to thank you for coming in and for your comments. We hear what you're saying, and we'll certainly be making additional considerations over the next week or so, as well as during an amendment process before the bill is finalized. So, your timing is good. Thank you.

**Mr. Yakabuski:** Thank you very much for joining us, Mayor King. That was quite a presentation. We appreciate your candidness and your emotion on the health of your community and a lot of others in the north.

Are there things that can be done to amend this bill so that communities like Terrace Bay and others that you mentioned will not simply cease to exist viably economically and that the human species there will have no future? Are there things that we can do in this bill to make that possible?

1140

**Mr. King:** In regard to the expansion of the habitat for caribou, certainly that could be reduced back to where it

was. As you can see, it's a significant area. You could make this legislation supersede other withdrawals, things like Lands for Life and Room to Grow initiatives, in order to balance it out and say, "We're going to take precedent with this one" because some of these other fibre withdrawals are just automatic mechanisms. A plant changes ownership. We protect a bunch of property. We draw a line around a bunch of the fibre. Under the Room to Grow initiative, there are calls for proposals right now in Kenora to bring in a new mill to replace the one that has been closed and is being demolished, and Room to Grow applies.

**The Chair:** Thank you, Mayor King. Mr. Bisson.

**Mr. Bisson:** I would just say that your emotion and the power of your presentation are very apparent. I can say that the people of Marathon were heard here today, clearly. I understand first-hand. I, too, represent communities that were affected—Opasatika, Smooth Rock Falls—who lost their only employer. I understand how you feel, but specifically, you're asking this committee to make some amendments. As I hear it, you're saying that we need to take into account social and economic impacts from withdrawals of land and the power of the minister to be able to have the final say.

You heard what Mr. Oraziotti had to say. Do you feel any more comfortable today, based on what you heard?

**Mr. King:** I certainly feel that the minister should have the final say. He's going to finally get the blame, regardless of whether he had the power to make the decision or not. So he might as well have the clout, because he's going to get all the flak.

**Mr. Bisson:** That's a good point.

**The Chair:** Thank you, Mayor King. One point before you go: On your slide deck, three pages from the end, one sentence just ends.

**Mr. King:** Disappears? I'm sorry for that. The number is 9.5 million.

**The Chair:** Okay, thank you.

**Mr. King:** In 1990, there were 14 million cubic metres of available wood supply in the northwest region. The final line is: We're now at 9.5 million.

**The Chair:** So it should read, "Has been reduced to approximately 9.5 million"?

**Mr. King:** That's right, and the industry is using nine million.

**The Chair:** Thank you very much for coming today.

## ONTARIO BAIT HANDLERS

**The Chair:** Our next presentation is from the Ontario Bait Handlers, Bill Davies and Jim Leworthy.

**Mr. Bisson:** Chair, is that the last presentation for the morning?

**The Chair:** It is.

**Mr. Bisson:** Somebody has a BlackBerry on the table, and it's interfering.

**The Chair:** I'm using it to time, but I don't think it is mine.

**Mr. Bisson:** No.



**Mr. Yakabuski:** It could be the radiation from your jacket.

**Mr. Mario G. Racco (Thornhill):** I know. I wanted to wake you up today.

**Mr. Bisson:** Does it come with spare batteries?

**The Chair:** The floor is all yours while these guys discuss their fashion tastes.

**Mr. Bill Davies:** I'd like to thank the committee for inviting us to this meeting. I'd like to reiterate many of the things that past presenters have presented, without going into a whole lot of what they've already said. One of my biggest concerns—

**The Chair:** Excuse me, sir. Would you introduce yourself before you start.

**Mr. Davies:** I'm sorry. I'm Bill Davies. We're with the Ontario Bait Handlers. Going back to where I was, we're very much concerned at the fast-tracking of this and the implications that this will have on many people across the province as this is fast-tracked through the system. The fact that many people had to travel thousands of miles just to get a 10-minute hearing on this committee I think is almost a shame to a democratic process. The impact that it will have on many people will be far-reaching, and the government does not do the people it serves a service by the process that they've implemented.

That being that, the Bait Handlers supports conservation and preservation of our native species. We also support and endeavour to see that threatened and endangered species make a comeback and become a thriving population so they can eventually be removed off the species-at-risk list. It would appear that if left unchanged, Bill 184 only offers hit-and-miss measures to protect our threatened species but falls short of a process that would lead to a recovery process.

One of our main concerns, and one that very much concerns me personally, is the definition of "habitat" or lack thereof. That is in section 2. With such an ambiguous, all-encompassing definition of "habitat," we don't know where we stand. It has been spoken about a little bit by Stewart Frerotte: that there are severe penalties that could be imposed on those who disturb a habitat or a threatened species. Us being in the bait and tackle industry, we're quite often seining in creeks and stuff like that, and if we happen by chance to come across a threatened species, the onus is put right back on us. This is a very, very scary prospect to us, especially with the penalties being imposed.

The act seems to address the species at risk, but it doesn't actively address the fact that we need a recovery program. Each species is specific. The other thing that the act doesn't cover is that if a species is listed—I'm just thinking of one off the top of my head. You have lake sturgeon down our way. They are not at risk in southern Ontario, but in other parts of the province, they are at risk. Yet the species-at-risk act would be all-encompassing, so it could be that if somebody disturbs a lake sturgeon down our way—which have been fished and harvested for years by anglers—all of a sudden now it's

another thing that's removed, not because they're at risk in our area, not because the habitat is not good in our area, but because there's a problem in some other part of Ontario. This act must address that. It can't just be an all-encompassing act.

Another area that we're extremely concerned with—I hate to sound like a broken record—is this COSSARO group. You can read what we've said, but I'd like to address a question that was asked: Do we feel comfortable leaving it all in the scientific community? I've just gone through a winter with VHS, and it was left totally on the scientific community. Some of my friends have been on welfare all winter. The government did not consult the community aspect of the groups. We're still fighting scientific data that doesn't exist through scientists. We have a problem that, through the whole process, this idea of community starts at the beginning of the preamble of this act, but when you get into the act, it seems that the government forgot all about the community and the users.

I've seen time and time again where the scientists—I've been in the bait industry for 25-plus years; I've been in hunting; I'm also a trapping instructor in southern Ontario. Far, far too often when bills like this are fast-tracked through the government, it always ends up that they wind up coming back to us. We've found over the years that it is a whole lot easier to get it right the first time than it is to try to come back and re-address the problems that you caused. It's a whole lot easier to keep my business up and running than it is to try to restart it after the government has done something specifically to close me down.

When that is all said and done, with all due respect, the person I vote for better be the person who is responsible. I want the option to vote him in or vote him out. He ultimately has to be responsible to me. This COSSARO group is not responsible to me. They are going to be able to make decisions on my livelihood and several other people's livelihoods without any answerability to them. I strongly object to that in what—I think we still have a democratic society the last time I checked.

We would also like to see a committee established that will have to have a recovery program in place before they can put a species at risk, so that we know exactly what we're dealing with. Also, any process that this act includes should be an open process and require at least 60 days' posting on the EBR. This should include one posting to let the public know what species is being considered for the assessment and another posting to show the intent to list the species.

I conclude with what I started with: We would like to impress on this committee the disappointment we have that this far-reaching piece of legislation is being fast-tracked through the Legislature without proper time for the people this legislation will impact to have the opportunity to have any input.

1150

**The Chair:** Thank you, Mr. Davies. The time for questions is about two minutes each. We'll start with Mr. Miller and Mr. Yakabuski.



**Mr. Miller:** Thank you, Bill, for your presentation today. I note your point about and your concern with the bill being fast-tracked through the process. You have to wonder why the government wants it fast-tracked. As you said, it's better to get it right the first time and take the time to work through the concerns.

You talked about habitat. I guess in the bill if a species is listed, the habitat protection is quite broad and all-encompassing, as you stated. Within the five-year time period—I think it's up to five years, depending on the status of the species—the regulations can then define the habitat more specifically. Have you got recommendations for, when a species is listed, how to deal with habitat in a less all-encompassing way? You gave the example of the sturgeon.

**Mr. Davies:** At the beginning in the preamble, we talk about community, but then in the implementing of the bill there is no community brought in. I hate to deal with straw men, but it's hard not to. Say there's a redbelly dace in a creek that I fish. Where's their habitat? The science community can determine that there's redbelly dace there, but the community that has been working in that creek for the last 25 years has far more knowledge of that creek system than any scientist would.

I can give you an example with the VHS—I know that's not the topic of the day—but the map has a creek going by my place that's in and out of the virus-free zone three times. All that the scientists had to do was call me up and ask, "Hey, does Brown Creek lie within the virus zone or lie within the virus-free zone?" I'm afraid of the same thing coming down through the COSSARO group, which is just a bunch of scientists, if you wish, who have never been on the creek and they're causing me to not fish.

**The Chair:** Thank you, Mr. Davies. Mr. Bisson.

**Mr. Bisson:** I agree with your comments that at the end of the day you want to be able to get your hands on the person who is the elected representative. But remember, it's not only him; it's also her, just to put it on the record. There are women elected to the Legislature, and maybe we should get more. Anyway, I just thought I'd put that kick in there.

The other thing is, you said in your presentation that what you're looking for, amongst a number of amendments, is one that basically says that the recovery plan has to be done before the actual withdrawal is done. What do you say to the environmentalist who, at the other end of the argument, will say that's pretty hard to do?

**Mr. Davies:** Well, I'm an environmentalist. I probably care more about the natural resources than the average Joe out there. My livelihood, the feeding of my family, has depended on my crawling up and down mud ditches for many years. If a species goes at risk or the environment is in danger, it far more impacts my livelihood than it ever does David Suzuki's, who's going around doing what he does best. A good example on science, as this gentleman over here mentioned, is that nobody comes without bias. You have good scientists who believe it's global warming, and you have good scientists who don't

believe it's global warming. Who's right? Who's going to get appointed to this committee? Who's going to wipe my livelihood off the map?

**Mr. Bisson:** That's the whole point of what you're saying: You want to basically take local knowledge into account, to have that counterbalance.

**Mr. Davies:** Absolutely. You can't do it without it.

**Mr. Bisson:** Okay.

**The Chair:** Mr. Orazietti?

**Mr. Orazietti:** Thank you, Chair. I don't have any questions. Thank you for your presentation.

**The Chair:** Thank you, Mr. Davies, for coming today. The committee is recessed now. We'll be resuming again at 4 o'clock this afternoon in room 151.

*The committee recessed from 1155 to 1604 and resumed in room 151.*

**The Chair:** Okay. We can call back to order again.

The delegations have come expecting to make a 10-minute presentation. We have a little bit of time at the end of the meeting, so I'm going to suggest we do the same as we did this morning and extend the delegations to 12 or 13 minutes.

## ENVIRONMENTAL DEFENCE

**The Chair:** That being said, our first presentation today is from Environmental Defence. Dr. Rick Smith is going to be speaking in place of Aaron Freeman. Dr. Smith, it's all yours. If you could leave some time at the end for questions, that would be great. The time is yours to use as you wish.

**Dr. Rick Smith:** It's a pleasure to be here today. It's especially a pleasure to see the honorary guardians of the silver shiner, the black tern, the bridle shiner, the northern madtom and the shumard oak. Mr. Rinaldi, I can't remember—the northern cricket frog, I believe, is what we gave you.

**Mr. Lou Rinaldi (Northumberland):** You got it.

**Mr. John Milloy (Kitchener Centre):** What was mine?

**Dr. Smith:** I think, Mr. Milloy, you were the northern madtom, an excellent little fish. Mr. Dhillon, I think you were the Shumard oak, a majestic tree; Mr. Brownell, you were the bridle shiner; and Mr. Miller, of course, one of the largest snakes in Ontario, the eastern fox snake, from your riding. Mr. Bisson, when he shows up, obviously the polar bear. I'm in august company today, and it's a pleasure to be here.

Bill 184, obviously from our point of view, is a promising piece of legislation with many strengths. Our real hope is that this standing committee and the honorary guardians on this standing committee make sure that the strengths in the bill are reinforced rather than weakened and that a number of necessary amendments are made to the bill to make sure it's as good as possible.

To put our support for this legislation and our support for improving this legislation in context, Ontario, like the world generally, is quite simply facing a crisis of extinction. There are now close to 200 endangered species in Ontario. Almost three quarters of those are not covered



by the current act and are, by all estimates, declining in number.

Sixteen of these species have already been lost from our province, and I think it's important for context here to point out that of course some of the species we're talking about are somewhat obscure and restricted to very small parts of our province, but we're also talking here about species that, when we were kids, were very common. The monarch butterfly is on the endangered species list. The polar bear is on the endangered species list. These are iconic species. These are species that are some of the more interesting creatures that give our province colour, that make this a great place to live. Frankly, I'd like my three-year-old son to grow up in a province that still has butterflies. I would not want his wildlife experiences to be restricted to grey squirrels and raccoons and the occasional starling, as much as I like those animals as well. So what we're talking about here is the threat of losing nothing less than what gives this province colour and makes it a great place to live.

All of us know that Ontario's outdated ESA from 1971 is failing to do the job, and we're very pleased that this bill is brought forward. I'd like to thank the members from all three parties for voting in favour of this bill at second reading.

Let me speak, first of all, about what we see as the strengths of the bill and then perhaps outline some of the weaknesses that we're hoping this committee addresses.

The promise of Bill 184 lies in four key elements, at least two of which must be strengthened even further during this amendment process. The elements that we're very pleased are in the bill to a certain degree are science-based listing, mandatory habitat protection, mandatory recovery planning, and stewardship incentives.

In the brief that was passed around, a brief that we've put together with a variety of other conservation organizations with whom it's a pleasure to work—the Save Ontario's Species Coalition that has been working on this issue, as really every major conservation group in the province has been working on this issue. It's our collective assessment that there remain some critical weaknesses in the proposed legislation that must be addressed if Bill 184 is to achieve its promise.

These are outlined at some length in the handout that you have. For my presentation this afternoon, I'm just going to highlight the first two points in the handout.

Number one, the way that the legislation protects habitat, the species-specific habitat regulations, needs improvement. Most species that are endangered in Ontario and Canada and around the world are in trouble because their habitat has been destroyed or degraded. Habitat loss is quite simply the number one threat to species.

The general prohibition on damage to habitat in section 10 of the bill is a good one. We support that approach. As written, however, the species-specific regulations outlined in sections 54 and 55 may protect part of a species habitat that is larger or smaller than the area used by the species to carry on its life processes. If it's smaller than the area that the species uses to carry on

its life processes, then it's our concern that there will be insufficient protection, insufficient guarantee of the species' survival and recovery. So this section, in our estimation, is in need of rewording.

The second thing I'd just like to highlight before welcoming your questions is the second aspect of the bill that we'd like to see improved: the recovery strategies and management plans, section 11. Again, it's one of the bill's strengths that it requires the development of recovery strategies for species at high levels of risk. This is critical, as the recovery strategy will provide the detailed plan of action, again, based on science and other relevant information to help ensure that the species can make a comeback. A major flaw in the bill, however, is that there is no requirement to actually implement the recovery strategies, which we hope is an oversight. This, of course, is contrary to the 1996 national accord signed by Ontario, and it falls below the best practices standard of Nova Scotia's Endangered Species Act. Without a requirement to implement, quite obviously we'll have recovery strategies that simply sit on the shelf gathering dust and action plans that go nowhere.

**1610**

I'll leave our more detailed assessment of the weaknesses of the bill with you, but I just wanted to highlight those two points as being particularly important.

In conclusion, to state the obvious, without a home, without their habitats, a species cannot survive. Without a requirement to implement recovery plans, species will not have the opportunity to recover from the brink of extinction, whether it's the polar bear, guarded by Mr. Bisson, or whether it's the northern madtom. Addressing these issues is essential to the ultimate effectiveness of the act and to our moral obligation to protect endangered species for future generations.

**The Chair:** Thank you. We've got two minutes each for questions, starting with Mr. Miller.

**Mr. Miller:** Thank you very much for your presentation.

My first question is, why are all the PC members snakes?

**Dr. Smith:** That's not true. Your colleague Mr. Yakubuski is a majestic butternut tree.

**Mr. Miller:** He is unique; that's for sure. I'm happy to be the fox snake. I was just trying to see if there was a bias there.

**Dr. Smith:** There was not.

**Mr. Miller:** Not that there's anything wrong with the fox snake.

**Dr. Smith:** Whenever we could, we tried to give members species from their own ridings.

**Mr. Miller:** But seriously, in this morning's presentations, a number of groups questioned the automatic listing by COSSARO. I think it's safe to say that quite a few of the different groups were looking for the minister to have flexibility after the recommendation, in that they thought it should be a recommendation that the minister then either accepts or doesn't accept.

There was also some question as to whether the committee would have unbiased science—or whether there



should be people with a background in applied science and/or people from industry or "community knowledge," I think was the term that was used, on that committee. How do you feel about that?

I also want to throw in another one connected with that: Would there be a problem if you have that committee and then have one more step before it goes to the minister, and that is to have it peer reviewed? So the committee makes a recommendation and then it's peer reviewed and then it's either automatic or the minister has discretion.

**Dr. Smith:** Thank you very much for that question. Let me say just very simply that if that provision of the act is watered down, we will not be supporting this legislation. My colleagues and I have worked extensively on the federal Species at Risk Act. That piece of legislation has a wishy-washy listing provision similar to what some of the folks here this morning were urging you to accept. That act does not work. Because the listing of a species is at the discretion of the federal government, there are vast jurisdictions in this country that don't have one single endangered species listed—

**Mr. Miller:** So how do you ensure that the science is not biased science; that it's real science, that it's peer reviewed?

**Dr. Smith:** I just completed the drafting of a status report for the federal act for COSEWIC, the federal committee. The procedure being contemplated provincially is very similar, on the scientific end, to what is in place federally. I'll just tell you that it's a very onerous, very peer-review-heavy process. It requires consultation with every affected stakeholder, with every affected jurisdiction. It includes a very significant consultation with aboriginal people. It requires a comprehensive literature review. It is peer reviewed at at least two different steps. So we're quite comfortable that it is exactly that kind of very robust, science-based listing process that we're looking for here. Our experience elsewhere in the country is, when the government is given the option of deciding on a whim what to list or not to list, large numbers of species never get listed.

**Mr. Bisson:** Thank you very much—and from the polar bear of the group. People should know what that reference is all about; maybe you can talk about it later.

One of the issues that's been raised this morning, and it's one I think we need to seriously think about, is the issue of being able to take into account the socio-economic impacts on a community.

You might have heard this morning the mayor of Terrace Bay, who was here, and who was quite emotional, quite frankly, because they've undergone a really serious situation in their community where they almost lost their only employer. One of the things they're asking is that you take into account what the socio-economic impact could be on a community. They worry, for example, about the woodland caribou: If you take a huge tract of land out of circulation, it means there's not enough fibre and somebody's going to go down. So from that perspective, what do you say to the mayor of Marathon in regards to—

**Mr. Miller:** Terrace Bay.

**Mr. Bisson:** Terrace Bay, excuse me; I was in Marathon the week before. What should we put into the legislation under this section so that socio-economic impacts have to be taken into account?

**Dr. Smith:** We're very pleased that the legislation already contemplates taking socio-economic concerns into account. It does so at the second stage of the species protection process. So in the first stage, which is the scientific assessment and listing stage, it is an objective process, driven by the best available science. I mean, it's an objective question: Is this species on the verge of extinction or not? Are there five of this animal left or are there 500 of this animal left? So the first stage of the species protection process is that objective, scientific listing stage, and the question is answered yes or no, based on the best available science.

If the best science says that this species is at risk, it proceeds into the second phase of the process, where the recovery plans are written. At that stage, the legislation is very clear. All the stakeholders will be gathered around a table, there will be very significant consultation by the government with aboriginal people, and socio-economic concerns will be factored in very heavily into the game plan that's written at that stage about how that species is then protected.

**Mr. Bisson:** I think we understand that, and we're supportive of that. The point is, we heard the Environmental Commissioner last week in Sudbury say that the MNR doesn't have the money to carry out its current mandates, let alone new ones. One of the things that he mused about is, if you don't have the money at MNR to properly fund the mandates under this legislation, the period from the interim order up to the point of actually making a decision may be mired by how much money they have or don't have to do the study. Meanwhile, you could take out of circulation a fair chunk of land.

**Dr. Smith:** I'm pleased that the government has put some money on the table. That was a necessary component, we thought, of making this thing go.

**The Chair:** Mr. Orazietti.

**Mr. Orazietti:** Just to clarify a couple of things, and to follow up on some of the conversations we were having this morning around automatic listing and the scientific committee COSSARO, some of the presenters this morning felt that it was completely inappropriate for COSSARO to make the determination and automatically list the species, and that the discretion should be left to the minister because they're elected and accountable and so on. I want to clarify: You're saying no ministerial discretion. If it's an endangered species and there's scientific evidence to demonstrate that, it gets listed. It's not up to any political individual to determine whether or not this is, in fact, an endangered species or not.

The other point I want to ask you about is, do you think the host of flexibility tools to address habitat issues are adequate in the legislation?

**Dr. Smith:** The answer to both questions is yes. We very much support the current suggestion in the legislation, which is that based on the best available science,



as assessed by COSSARO, the listing will occur. The only way this whole process is going to work—the only way it's going to have any credibility, frankly—is if the government of the day is not able to decide, at whim, based on non-transparent and subjective considerations, whether something's listed or not. Again, I'm saying this mindful that, in the subsequent part of the species protection process, when the recovery plans are written, that will result in major discussions amongst all the stakeholders about socio-economic concerns and what have you. That is the appropriate place for that discussion to happen.

In terms of your second question on flexibility mechanisms, absolutely. This act is much more flexible than the current act. We're pleased to support the sort of net gain provisions that are in the act. To use a simplistic example, if there's a gravel pit with endangered species at one end and the operator of that pit is able to demonstrate that they can recreate some endangered species habitat that is better than what exists currently at the other end of the gravel pit, this legislation provides some flexibility to do that. That is not currently the case with the inflexible 1971 act. I regret that it's exactly these sorts of flexibility mechanisms in this proposed act that do not seem to be understood by some of the folks that you heard from this morning. I think some of what you heard this morning was frankly alarmist and downright inaccurate.

**The Chair:** Thank you, Dr. Smith, for coming today.

1620

#### ONTARIO NATURE

**The Chair:** Our next speaker this morning is Ontario Nature, Wendy Francis, director.

**Mr. Miller:** It's this afternoon, just in case you haven't noticed.

**The Chair:** I don't even know what day it is.

**Mr. John Milloy (Kitchener Centre):** You need to open the drapes.

**The Chair:** Yes, that's what it is.

Good afternoon.

**Ms. Wendy Francis:** Good afternoon, Mr. Chair and members of the committee.

**The Chair:** You have about 13 minutes to use any way you like. It would be nice if you were to leave some time at the end for some questions.

**Ms. Francis:** I'll try to do that. Thank you. My name is Wendy Francis. I'm the director of conservation and science for Ontario Nature, one of the oldest and largest conservation organizations in the province. Formed in 1931, what was then the Federation of Ontario Naturalists is now a province-wide network of over 140 clubs and grassroots environmental organizations with 25,000 individual members and supporters.

I am pleased to be here today to provide comments on Bill 184 on behalf of Ontario Nature and also on behalf of the Save Ontario's Species Coalition that Dr. Smith mentioned.

In Ontario, we have a particular responsibility to make sure that our activities do not inadvertently drive other plants and animals to the point of extinction. Ontario is an extremely diverse part of Canada, and it's characterized by hardwood forests, mixed-wood forests and boreal landscapes farther north. As a result of these varied landscapes and habitat conditions, Ontario has a greater biodiversity than any other province in Canada except British Columbia. Unfortunately, we also have a higher number of species that are at risk of disappearing. In southern Ontario, the hardwood forests have all but disappeared, leaving in their place some of the most endangered plants and animals in the country. In this province we have the dubious distinction of having the greatest number of plants and animals known or thought to be at risk in all of Canada. In almost all cases, the single greatest cause of the disappearance of native plants and animals is the loss or disruption of their habitat, which is the conditions they need to survive and reproduce—not just their nests or dens, but the whole suite of conditions that they need. Therefore, reducing or preventing the further loss or disruption of Ontario's native habitats is the single most important thing that an endangered species act can do.

I also want to make the point that endangered species legislation is the tool of last resort in protecting biodiversity. In Ontario, we have a myriad of laws, regulations and policies that are intended to protect our native plants and animals. Our planning and land-use regimes, our environmental assessment process and our permitting and licensing requirements, among others, all contain requirements to consider and minimize impacts on natural features and wild species. But when those tools fail to do the job and particular plants and animals are on their way to disappearing from Ontario forever, we must take drastic action and we need the strongest possible legislation to provide that safety net. If we are doing our job as environmental stewards well, we will need to resort to the Endangered Species Act in fewer and fewer cases. However, when we do need it, we want our Endangered Species Act to be as strong as it possibly can be.

Overall, Bill 184 is a model Endangered Species Act. Endangered species legislation has been around for over 35 years and we know what it takes to have effective legislation that is the best defence against species going extinct. First, we need an unbiased scientific process that determines which species of plants and animals are at risk of extinction. Second, once those species are identified, we need prohibitions, with sanctions, against harming or killing them and against disturbing or destroying their habitat. These are the basic protections. Then we need to require the preparation of management plans and recovery strategies that provide specific guidance about how their habitat needs to be managed and special measures, such as captive breeding or re-introductions, that will help to enhance populations and allow them to recover to healthy levels.

Since 87% of the land in southern Ontario is in private hands, in this province we also need mechanisms that



encourage private stewardship and make private landowners partners in delivering habitat protection.

Bill 184 contains all of these things: a scientific listing process, automatic protection for plants and animals at risk and their habitats, the requirement of recovery strategies and management plans, and a variety of programs and incentives to support private landowners, including a new \$18-million stewardship fund. In these respects, Bill 184 is a great start toward a regime that will provide true protection for Ontario's most vulnerable plants and animal species.

However, although Ontario Nature and other members of the SOS Coalition are applauding this new approach to endangered species protection, there are some serious flaws in Bill 184 that, if not corrected, will significantly reduce its effectiveness. I'm going to address the remainder of my remarks to one category of those flaws. In particular, I'm going to focus on sections 17, 18, 19 and 56.

As I mentioned above, the basic structure of the bill is that endangered plants and animals are identified. They then automatically receive protection against harm and their habitat is protected. What sections 17, 18, 19 and 56 do is they create various exemptions that remove that protection; they remove the prohibition against harming or killing an endangered species or against damaging or destroying their habitat. If this legislation is going to be effective and if it's going to receive the support of the SOS Coalition, the bill must be amended to restrict the circumstances in which such exemptions are granted.

Of these, the section with which we have the most concern is section 18. It allows certain instruments of government, defined to mean agreements, permits, licences, orders or similar documents, to authorize activities that might result in harm or death to protected plants or animals or damage or destruction to their habitat. One might imagine a variety of government approvals that could fit within this category of instruments, such as work permits to construct roads, licences to quarry for minerals or aggregates, water-taking permits or forest management plans. Under section 18, such ordinary-course-of-business instruments could be a *carte blanche* to carry on the very activities that are harmful to protected species or their habitats. Such exemptions are allowed when the minister believes an overall benefit to the species and he believes that reasonable alternatives to the activity have been considered. Our concern is that it's not hard to imagine a scenario where a minister, perhaps of a future government, might easily conclude that an industrial licence or management plan meets these requirements and allows to continue the very activities that have contributed to a species decline.

I'm going to use the example of forest management plans, as I gather you heard quite a bit about that this morning. Ontario's southern boreal forests have been managed primarily for logging in the past few decades. Unfortunately, our system for protecting the environment has failed to prevent our logging practices from having negative consequences on some species. In particular,

one of the impacts of logging is that it destroys the habitat of threatened woodland caribou. As logging has moved northward in our province, woodland caribou range has retracted. Yet we still have forest industries and some government biologists who argue that the best way to manage caribou, the way that will allow them to recover in Ontario, is through more logging. It will completely circumvent the scheme of this legislation if the very activities that have contributed to the decline of caribou become authorized by section 18 to allow continued damage to or destruction of caribou habitat. Therefore, we're recommending that section 18 be amended to require that the minister consult with an independent expert who has provided an opinion that the proposed activity, logging or otherwise, will achieve an overall benefit to the protected plant or animal within a reasonable time.

I also want to point out another provision that we think is necessary to strengthen section 18. It's actually at the top of page 8 in my submission. We are proposing a new section, section 19.1. What we're saying is that if an instrument of any kind, a permit or approval or a licence, is going to be treated as if it were providing a benefit to a species at risk, then that instrument needs to contain provisions that are consistent with management plans and recovery strategies so that we're sure that the management regime that's being applied to that particular species is consistent with what the experts have said is necessary under a management plan or recovery strategy.

1630

Going back to page 6 of my presentation, section 17 is another section about which we have concerns. It permits the minister to issue permits to authorize a person to engage in an activity that would otherwise be prohibited by the legislation. Again, we're concerned that the minister's decision will be made without the benefit of some independent expert advice. These provisions require the minister to make a number of judgments about potential impacts of an otherwise prohibited activity, but there's no requirement to seek independent scientific advice about those judgments. So we're recommending that subsection 17(2) be amended to require consultation with an independent expert regarding whether or not there will be an overall benefit to the species and whether or not the best alternative has been chosen.

There's another exemption in subsection 17(2)—and again, we're making the same recommendations for 17(2) and also 17(6). In each of those cases, we're recommending that an independent expert be consulted, meaning someone who's not associated with the activity that's being proposed; so no one who has an interest in the permit or the industry that's seeking to have that permit applied to them.

We would extend that concern to section 19, which is the provision that makes Ontario's aboriginal people partners in the delivery of species-at-risk stewardship activities. That's a very commendable provision that we support, but similarly, section 19 doesn't contain any of the requirements of section 17 or 18 for an overall benefit for a protected species. So we're recommending, again,



that for all of sections 17, 18 and 19, as well as 16, that there be a requirement that any exemptions granted under those provisions contain provisions that require the instruments to be consistent with a management plan or recovery strategy.

Finally, turning to the very end of the legislation, there are two regulation-making provisions.

Section 56 allows the minister or cabinet to make regulations that might have an adverse effect on a protected species, and we're recommending that that be amended to require the minister to consult with a panel of independent experts regarding whether or not the proposed regulation will jeopardize the survival or recovery of the species in Ontario and that no such regulation be made unless it has been presented to and endorsed by the Legislative Assembly.

Section 54 is another regulation-making provision, allowing cabinet to make regulations creating exemptions from protection. There are no restrictions or conditions on this broad power to remove the act's protections for endangered plants and animals, so we are recommending the requirement of an amendment to section 54 that no such exemptions shall have the effect of jeopardizing the survival or recovery of a protected species. Alternatively, if a proposed regulation could have the effect of jeopardizing survival or recovery, then it must go through the requirements of section 56, as we've amended it; therefore, an independent panel of experts.

That's a quick walk-through of some of the concerns that we have.

I thank you for the opportunity to appear before you.

**The Chair:** Unfortunately, you've used up all your time, so I'm going to have to ask you to excuse yourself. Thank you for being here.

#### WILDLIFE CONSERVATION SOCIETY CANADA

**The Chair:** I call forward Justina Ray from Wildlife Conservation Society Canada. You have 13 minutes to use as you see fit. If you could leave some time at the end, that would be nice; if you don't, that's entirely your business.

**Dr. Justina Ray:** Thank you very much for the opportunity to provide comments on Bill 184, which I offer from my particular perspective as a member of the Endangered Species Act Review Advisory Panel.

I am a zoologist by training, with a Ph.D. in wildlife ecology and conservation. I have worked on wildlife research and policy implications in Ontario for the past 10 years, particularly in the north. I am also a member of the wolverine recovery team, so I've also seen recovery action from the inside.

A year ago, when the McGuinty government decided to embark on the process of reviewing and updating Ontario's badly out-of-date endangered species legislation, it made a commitment from the start to make this province's ESA quite simply the best endangered species legislation in Canada. Minister Ramsay convened a nine-

member independent advisory body and in the introductions at our first meeting, gave us this explicit mandate.

In living up to this fairly ambitious goal, we were able to benefit from over 30 years of experience, both from within Canada and throughout the world, of endangered species legislation in action, in formulating our recommendations.

In August 2006, the panel submitted a report to Minister Ramsay that outlined our recommendations for Ontario's new ESA, focusing on 10 issues that, if appropriately addressed, we felt strongly would serve as the basis for the most effective possible ESA. I brought copies of this report just in case people didn't have it at their fingertips. Although it predates the legislation, it articulates a lot of the rationale behind the recommendations that we proposed, many of which were followed by the ministry. In fact, we continued working with the hard-working ministry staff members in the formulation of the legislation from the time the government made the decision to adopt the framework we proposed until it was introduced in the Ontario Legislature on March 20.

I appreciate the challenging role the ministry has played in responding to the concerns and interests of stakeholders, and balancing these against careful consideration of what will be best for the present and future species that we put at risk as a consequence of our activities in this province. Bill 184 has come a long way in addressing these needs, although my message today is that a few critical gaps still remain. It is important to note, before I detail some of these gaps, that the panel's recommendations constitute an integrated package—

**The Chair:** Ms. Ray, if I could just jump in a minute. These are really sensitive microphones and if you get too close to them, they kind of pop a little bit.

**Dr. Ray:** And I couldn't hear it back there, so I thought I had to get closer. Sorry.

**The Chair:** I know, it's—the gentleman in the corner—I think you're killing him and you probably don't know it, but you can sit back and I think you'll be fine.

**Dr. Ray:** Thank you for letting me know.

It's important, before I detail these gaps, that I note that the panel's recommendations constitute an integrated package with many of the recommendations in one section intricately tied to those in others. Accordingly, although the bill is up to the highest standards in some areas—for example, scientific listing—in others it falls short, primarily due to lack of detail and exposure of potential loopholes. Therefore, as a package, the bill does not yet achieve a best-practices standard.

My purpose today is to offer the committee an evaluation of the recommendations that the panel submitted to the minister and report both on the extent to which these are addressed in the bill and the changes that would need to be made, in my opinion, in order to achieve the spirit of the panel's recommendations and the stated goal of the government. Because there's not enough time to go into each of these issues in detail—although I provide that in the handout—I will highlight at this time the four key



elements where I feel amendment is needed and will leave you with the remaining details in written form.

The first concerns the species-specific habitat regulation. In acknowledgement of the undisputed fact that elimination or degradation of habitat is the leading cause of species endangerment, the panel put forward carefully considered measures for ensuring the protection of species' habitat in the form of these specific regs. While the regs themselves do appear in the bill in the present version, there is no explicit link between them and recovery goals and objectives formulated in the recovery strategy, which the panel felt was necessary for such measures to have a real chance of being effective. Section 54(2) will become a loophole unless the bill makes it clear that species-specific habitat regs must, at a minimum, describe habitat that sufficiently provides for the protection and recovery of the species covered by each regulation and contains that specific tie to the provisions put forward in the recovery strategy.

Second is the role of recovery strategies. The present role of species recovery strategies as advice to government within the context of the myriad MNR practices and decisions has reduced to an insignificant role the objectives and actions contained within these carefully considered documents put together by experts. That's the current condition. There is nothing, unfortunately, in the present bill that would change this particular condition. To meet the best practice standard in this area, which is currently in the Nova Scotia ESA, and also Ontario's obligations under the national accord, the act should require the province to implement feasible aspects of a recovery strategy. In addition, the minister's response to the recovery strategy in subsection 11(6) should be strengthened to provide detail as to the nature of the response, specifically how and what elements of the recovery strategy will be implemented and how the strategy will be used in the formulation of the species-specific habitat regulations.

1640

My third comment concerns the content of recovery strategies. The bill contains no direction at all for what constitutes an adequate recovery strategy outside of "recommendations ... to assist in the recovery of the species" in subsection 11(2). The recovery strategy provisions should include a list of the minimal elements that must be included in a strategy: the population and distribution goals and objectives that will provide for the recovery and survival of the species; identification of threats to the recovery of the species; third, identification of habitat necessary for survival and recovery; and fourth, the recommended steps, which are generally research and management activities, to recover and protect the species and its habitat. This addition will both help articulate the role of the recovery strategy in species recovery as well as provide the necessary link between recovery planning and habitat protection.

Fourth and finally today, the exceptions to the protection provisions require a little bit of amendment. Although the panel fully acknowledges the necessity of

incorporating provisions for flexibility in the ESA through a structured exceptions process, we did not recommend the power to approve activities that would have significant adverse effects on species at risk. If the act is to contain such a power, then the outer limits of its use should be established in clause 54(1)(b) such that no exemptions could be granted that would lead to the extinction of the species. That would be accomplished by adding wording that simply said that no exemptions can be passed that would put the survival or recovery of a species in jeopardy.

There are many excellent best-practices-type provisions in the bill already, including the scientific listing provision and its generally proactive stance towards recovery of species in Ontario. Given the short time available, I've focused on what is needing to be changed to make this bill go from good to great. I appreciate any help the committee can offer in improving the bill such that the advisory panel's recommendations are fully implemented. Thank you very much.

**The Chair:** Thank you, Dr. Ray. You've left about five minutes for questions. Starting with Mr. Bisson, about a minute and a half.

**Mr. Bisson:** I'm sorry, but I walked in half way. I was up in the House. I cede to the government.

**The Chair:** If each of the other parties would take two minutes then. Mr. Orazietti.

**Mr. Orazietti:** I don't have any questions for Dr. Ray other than to simply add the comment that we appreciate you coming in today. Your presentation is thorough and concise. We appreciate your support for the bill and appreciate the suggestions that you've made here today, so thanks for coming out.

**The Chair:** Mr. Miller.

**Mr. Miller:** I guess that leaves lots of time for me.

**The Chair:** You get about three minutes.

**Mr. Miller:** I guess my first question would be about the funding that goes along with this bill. There's \$4.5 million a year that I gather is going towards stewardship primarily, and yet we hear from groups like the Ontario Federation of Anglers and Hunters, who say that the Ministry of Natural Resources, for their fish and wildlife program alone, is \$35 million a year short. I would assume that the work done by the fish and wildlife program is a lot of that sort of base work that's important for this legislation. So maybe you could just talk about funding. Also, there was a federal audit done on the SARA program where they've spent \$200 million and it's still a mess, and there isn't adequate protection being achieved.

**Dr. Ray:** Those are two different questions. I'll actually address the second one briefly before I answer the first one. Part of the reason that there has been so much expenditure on SARA and, frankly, waste actually not resulting in much good for many of the species is partly because of the very convoluted processes that are inherent in the bill, everything from listing to some of the provisions in terms of really requiring quite a lot of bureaucracy that probably is not as necessary in order for action.



Having said that, our panel recommended—and we talked very passionately in all of our meetings about the absolute need for any best practices act to be accompanied by adequate funding. I'm involved in the Nova Scotia act, which is an excellent act which did not provide enough funding. I'm actually on one of the recovery teams, and it's been a fairly frustrating process to be armed with an excellent act but not be able to follow through. Where some of that funding has come short has been both in stewardship opportunities but also in just beefing up the ministry capacity a bit in order to help with the actual follow-through of the act.

When we were involved in giving advice to the ministry throughout this process and we came to the point where there were details, we got down to the details of some of the funding requirements, we did talk about stewardship being extremely critical, that it's very important that if there are consequences to people that have endangered species and threatened species on the land, they need to be given more adequate tools than would be presently available to be able to work that into a win-win situation and be involved in the stewardship. That would also indirectly help to the extent that you cannot have the entire burden of species recovery being on the back of the minister.

We also advised very strongly—and certainly this was the intent at one point, and I haven't seen the details of the budget in terms of where the funding has gone or I haven't studied it carefully enough—that certainly the funding has to also beef up the ministry capacity to deal with measures that are in the act. For example, the species at risk team is overworked and has too many species on their plate and then sometimes the recovery teamwork lags because there isn't enough support provided by the ministry to be able to get that going. So that is absolutely critical to have that be a part of the act.

**The Chair:** Thank you, Ms. Ray. Unfortunately our time is up. Thank you very much for coming today. It was appreciated.

#### ONTARIO FEDERATION OF AGRICULTURE

**The Chair:** Moving on to the next delegation, which is from the Ontario Federation of Agriculture, Mr. Paul Mistele, the vice-president. Please come forward.

**Mr. Rinaldi:** How you doing, Paul?

**Mr. Paul Mistele:** Good, Lou. How are you?

**The Chair:** You were here from the start, Mr. Mistele, so you understand that you have about 13 minutes to use any way you like.

**Mr. Mistele:** Thank you, Mr. Chair. I guess I'll get right into Bill 184. I certainly want to thank this committee for listening to the Ontario Federation of Agriculture, the fact that we represent about 38,000 farm families in the province of Ontario, which is nine out of 10 farmers in the province. So we have a lot of people out there who know what's going on when it comes to community service and when it comes to community

knowledge. We certainly want this developed through the Endangered Species Act.

We are very keen on support for endangered species protection right from the very get-go here, but it doesn't mean that we have to necessarily support this Endangered Species Act, 2007. We believe that some of the act will disadvantage Ontario farmers and rural landowners, and a long history of supporting environmental initiatives that improve on-farm wildlife habitats could be challenged here.

You have to remember that the Ontario Federation of Agriculture is one of the founders of the Ontario Farm Environmental Coalition and the developer of the environmental farm plan, and you have to realize that these are world-class, world-leading programs. So you find me one area out there that can do better than us and I'll buy a beer somewhere.

The summary of OFA's key recommendations—and I'm just going to go through these very quickly because we don't have a lot of time. I would like to say that we feel that there should have been more time put out around the province at different locations and that having these two days in Toronto is just not quite fair.

Number one: That the species at risk in Ontario stewardship program be expanded to include a binding commitment to fund compensation for individual farmers and private landowners for income lost through restrictions on the use of their land.

This is sort of underscored by the fact that the minister's commitment to fund stewardship actions to promote the recovery of species at risk or improve habitats for species at risk—I think Minister Ramsay has been very clear on that.

1650

We see private land stewardship as the key to the success of the Endangered Species Act of 2007 and we have to once again understand that farmers are the historic stewards of the land. The continued presence of wildlife throughout agricultural Ontario is a testament to the stewardship actions of generations of Ontario farmers. Farmers are willing to shoulder their share of the costs of endangered species protection and recovery, but we will not be willing to bear the cost of a public benefit. The government must compensate farmers and private landowners for income loss through restrictions on the use of their private land under this act.

Second, the references to the precautionary principle should be dropped from the Endangered Species Act, 2007. While we agree with the principles of precaution, we disagree with the precautionary principle as defined by environmental groups. Precautionary principles cause us concern because of the reference to full scientific certainty. Science is knowledge which is constantly evolving. It is inappropriate to require something as unattainable as "full scientific certainty."

The (b) portion of the habitat definition should be rewritten to reduce its scope: The Endangered Species Act, 2007, contains two definitions for habitat: one for use in species-specific regulations and the second following



listing (b). The definition is too broad, particularly in light of the guiding reference in the preamble to the precautionary principle. Huge tracts of land may be impacted indirectly by migration or rearing. It could negatively impact farm operations during the period it applies. Support the wording proposed by our resource sector colleagues.

The definition of “species” should be dropped from the act. There are concerns with defining species also because there’s quite a range there. Neither the ministry’s discussion paper nor the advisory panel proposed a definition for species. The current act contains no definition of species and neither does the federal Species at Risk Act, if you want to talk about the federal program, as you just did.

Subsections 23(6) and 25(8) of the Endangered Species Act should be expanded to include farm buildings used to house farm animals, store farm products or prepare animal feeds, and that subsection 23(6) prohibit an officer from entering into those buildings. From agriculture’s perspective, entry into a barn or other farm building used to house animals, store farm products or prepare animal feeds concerns us also because of the biosecurity issue around the farms that we have today. Plant and animal diseases can easily be transferred from farm to farm on clothing, footwear, vehicles, even the vapour in your lungs, if you want to get right into it.

Farmers restrict human access into these types of buildings to maintain high animal health standards, high food safety and quality standards and minimize disease transfers from farm to farm. You have to remember, I’m in the chicken industry, I’m in the broiler industry on the chicken side of it, and farrow-to-finish hogs, and we go through this every day. When there’s a veterinarian coming around to draw blood and what not, it’s a big issue, and it costs us a lot of money to maintain that every year.

Section 33 should be dropped from the Endangered Species Act. Section 33 authorizes an officer to pass through the lands or buildings of one person to facilitate access to the lands or buildings of one suspected of violating the act. We categorically object to this provision. We are unconvinced that this section has any merit—no onus on the officer to obtain permission or to even make property owners aware of the enforcement officer’s intentions; concern that on-farm biosecurity protocols and practices would be compromised.

The last point I’m going to make talks to the word “wilfully” being inserted into section 36. “Wilful” speaks to one’s intent and takes the action beyond simple oversight, accident or lack of knowledge. We do not agree that the defences provided in section 39 replace “wilful.”

We could go on for a long time and discuss this issue, but I know it’s getting late in the day and some of us have been up since 5 o’clock this morning. If there are any questions, I will entertain them at this point in time.

**The Chair:** Thank you, Mr. Mistele. You’ve left about six minutes, and our first questioner this time is the government side. Mr. Orazietti, two minutes.

**Mr. Orazietti:** Thank you very much for your presentation. I do think it’s appropriate to add to the record that consultations began about a year ago, and we’ve also been to Windsor, Kingston and Thunder Bay as well. So—

**Mr. Mistele:** You have to remember, though, that those issues were not necessarily consultations. We found out about them a couple or three days ahead of time, and we just didn’t feel that was appropriate of the government.

**Mr. Orazietti:** Okay, well, I wanted it on the record that they did begin a year ago and that we did visit those locations to speak to stakeholders.

I guess my question is around identifying species at risk. This issue came up this morning, and it has come up this afternoon again: the scientific body, COSSARO, or the membership committee that would use scientific evidence to determine whether or not a species is at risk, and if they did determine that it was at risk, it would be automatically be added to the list. The suggestion was made this morning that that should be the minister’s discretion as to whether or not species should be added. How do you feel about that, whether it should be the minister or COSSARO?

**Mr. Mistele:** I think that we live in a democratic country and at some point in time, the ministry and the government have to be responsible for the decisions made. That would certainly apply to the fact that the minister should have to make that decision. There should be a process in which the minister is involved.

**Mr. Orazietti:** Thank you.

**The Chair:** Mr. Miller?

**Mr. Miller:** Thank you very much, Mr. Mistele, for your presentation. I would agree with you that there was a very tight time for these consultations. From the reports I had back from the other meetings that the ministry had, there were not a lot of people at them, and you had to be invited, so I wouldn’t call those consultations. I would like to get on the record that I was willing to meet for constituency week around the province, and we tried to get the government to agree to that, but they brought a time allocation motion and limited public input.

You said that your existing programs would be disadvantaged by the passing of this bill. Can you expand on that? I know you have the environmental farm plan—

**Mr. Mistele:** As an example I’ve used many times in different meetings, if I have 100 acres of wheat out there and somebody’s noticed something in that wheat field and they’re not 100% sure what it is—and wheat’s a very time-sensitive crop to get harvested. So if they came along to me three or four days ahead and said, “We want you to stand back on harvesting this crop of wheat,” and I said, “Okay, fine,” so we go from \$4.50 a bushel down to \$2 a bushel because of grade discounts, who’s going to pay me that?

I haven’t heard that amount of money talked about anywhere. Maybe there are some issues around that, but for the most part, it’s simple things like that. We want to be part of the solution on species at risk.



**Mr. Miller:** So the farmer on the ground would be worried that he's going to find something in his field and not be able to harvest his crops and not get compensated for it?

**Mr. Mistele:** The thing is, we don't know. This is why we've asked for more time and more process in this situation: so that we can get to where we want to be on this because we're not there yet. To drive this home for whatever political reason sort of bothers us in the agricultural world. You have to realize that we are farming, with the other primary resources—755,000 people—and we put out over \$15 billion worth of product for this province every year. Who's going to take care of the issue?

**The Chair:** Thank you. Point well made, Mr. Mistele. Mr. Bisson.

**Mr. Bisson:** I guess a couple of questions. One is: Do you feel the ministry is properly resourced to be able to do the work that needs to be done under this act?

**Mr. Mistele:** I think that we've run into some very good people at the ministry, very knowledgeable—

**Mr. Bisson:** No; I said, are we properly funded, the ministry?

**Mr. Mistele:** Oh, sorry. I thought you—

**Mr. Bisson:** We've got good ministry staff; that ain't the question.

**Mr. Mistele:** So you're talking about the \$18 million over four years, is that what you're challenging?

**Mr. Bisson:** What I'm getting at is, the Environmental Commissioner last week made the comment last week that currently the ministry is having a hard time trying to do the work that we've mandated they do by legislation because of lack of funding. I'm just asking, in regard to here, because it'll be obviously some money to be expended: Do you think that the ministry can do what's called for in this act with the current funds?

**Mr. Mistele:** Isn't that a real good question? I wish I could answer that, but we don't know how far you want to go on this. You get different reports from different sectors and you can get a number anywhere from \$20 million to \$500 million, depending on where you want to go. I can't honestly answer that question.

**Mr. Bisson:** That's fair.

One of the other issues that was raised this morning is, currently, the way the legislation is written, if COSSARO decides to take habitat and to protect it while we try to determine exactly what the situation is, you don't have to take the socio-economic impact into consideration. It's only at the end of that process of review that that's taken in. The suggestion was that the process should be both at the beginning and the end, in regard to taking in socio-economic impact. What are your thoughts?

1700

**Mr. Mistele:** I think that as a primary resource sector, we've put a lot of thought into where we want to go with the decision-making. We want to make sure that if there is a species that's being looked at—plant or animal—that we're upfront with this and that there's no big secret, so that somebody doesn't come along and say, "Well, you

can't farm that field simply because we think that there's something growing in there or something's living in there." I think that we can work very closely with the different people who are going to be in the system. It's a matter of people stepping up to the plate and being willing to be accounted. That's what we're going to be doing before too terribly long.

**The Chair:** Thank you for attending today.

## TOWNSHIP OF SCHREIBER

**The Chair:** Our next speaker is from the township of Schreiber, councillor Pat Halonen. You've got 13 minutes, too, Councillor. Use it as you see fit. If you could leave some time at the end for questions, that would be appreciated.

**Mr. Pat Halonen:** I'd like to thank you for allowing me to come. Four years ago, when I got into town politics, I wouldn't have believed that I'd be down here talking to a commission on species for life. I thought I'd be looking after the roads, the garbage, the sewers, the water, but in the last three years in northwestern Ontario, and especially in the Thunder Bay district, we were devastated in the forest industry. I know lots of families that have had to move. People sell their houses for \$5,000; some give them away. I thought we were just turning the corner, and things started to change in the forest industry. Mr. Buchanan bought the mill in Terrace Bay, and he's coming to the municipal leaders now and asking us to come down here and talk to you on the species.

I had a hard time with this, because lately, the government—I don't believe you look at the north like you look at southern Ontario; sometimes I don't think you even know we're there. I've seen things happen in the north. I'll just take, for instance, the black bear: You took away the spring bear hunt, which was \$50 million dollars out of our economy. What for? Because people brought you a little teddy bear and said, "These are endangered." I'll tell you right now, my citizens and my town are endangered, from the spring until the winter, by black bears. But are you listening to us? No. You don't really care what goes on up in the north. Now I've got a mill asking me to come down here and talk about species at risk. I just don't know what to say. We are suffering in the north. I can tell you, I like every animal. I fish. I hunt. I don't want any species at risk, and I'm willing to help them out, but I'm not willing to help them out and lose our livelihood and watch my kids disappear and everybody disappear out of the north.

Do you know who the endangered species is? Us. There's 0.2 of us per square mile in northwestern Ontario right now.

There are some points in this species act that I would like to touch on—especially Dr. Smith's comment that the group this morning didn't know what they're talking about and were alarmists. I'm sorry, but my grandfather moved there in the 1800s, my father lived there all his life, I've lived there all my life, I hope my son lives there



all his life; we know what we're talking about. These people think that they know what they're talking about. They haven't been in that area for well over a hundred years, before logging even started there. So that's what I'm scared of. It's going to be the special interest groups that are doing this to us, and not the scientific. If they'd come up and look and talk to the people I have to talk to, and explain why their jobs are leaving and the people's businesses are going down, and why—I've got a hard time with this.

But I'd like to touch base with the four points where I see a problem. The habitat is one of the big ones—that the minute they put an Endangered Species Act on, they're going to take over a part of land before we have any say in it. I believe the municipalities—or if it happens in the Thunder Bay district, then the Thunder Bay district league—should be looking at it, with the businesses and with the scientists to come around it.

We've given up, right now, over 25% of our land to parks and Lands for Life that we can't do anything with. What I'm asking you is, if we have to give a piece of land up for an endangered species, then I'm asking you to give up this Lands for Life that we gave you a long time ago, to help our forest industry, because I don't believe our forest industry should go down, and our mining industry shouldn't go down. We don't have too many industries up north except tourism, hunting, fishing, mining and forestry. If you're going to start taking our livelihood away—I just can't believe what's going on. I thought you people down here were voted in by the people, for the people—not for activists, not for any special interest groups—but it seems that Toronto, right now, in the eyes of all northwestern Ontario, all you guys look at is what the activists do. That's the way it's played out, with no thought of us up north.

I know last year there was a lot of talk about separating from southern Ontario. Well, keep on pushing that nail because, mark my words, we're so close to it, it's unbelievable. One more nail is all we need. If we start losing another business or another industry because southern Ontario can't handle what they've got down here and now they're coming up north to do their actions, they're making a great mistake. You're just honestly making a mistake in northwestern Ontario—and I'm talking all northern Ontario. It's not a good situation in northern Ontario, and you have to help us.

I'm not saying that we're against the Endangered Species Act, but you certainly got to help us. I don't believe for sure that the government of the day can give something to somebody and say, "Here, this little committee—you're God." They never got voted in. They never got nothing. If you're going to vote for the people who are going to sit on that committee, that's okay. But if they're not voted in, that should never happen—absolutely never happen.

If Dr. Smith would like to come up and talk to the people up north—because we are friendly people—we'd gladly have him. I'd show him his animals, and we're not out to kill them, shoot them, or anything—except your

black bears, because we got to protect our kids. I don't believe you guys have any black bears down here, so we'll send you all you want, all you want. We can load up trains every day. You'd be doing us a blessing, and we'd probably be doing you a blessing, because you could phone that hotline of yours and they could ask you where your barbecue is. That is the stupidest thing I've ever heard—when you phone that hotline—your bear hotline tips. I can't believe this government, or any government—and I'm not blaming the Liberals for it. The Conservatives are the ones who threw it out. I'm mad at them too.

1710

**Mr. Bisson:** For once, somebody's not mad at me. I'm so happy. It doesn't happen often. We're going to have a party here.

**The Chair:** That's right. It probably won't last.

Thank you, Councillor. Are you ready to take questions now?

**Mr. Halonen:** Yes, I am.

**The Chair:** You've left about three minutes, and we're starting with Mr. Miller this time. It's about a minute each, so it will have to be pretty brief.

**Mr. Miller:** Thank you very much for your presentation. I guess my first question is—he's come a long way—is the committee covering the costs of people who have come down from the north? Seeing the government wouldn't agree for the committee to travel around the north, are we covering the costs of those—

**The Chair:** We hadn't discussed that in the subcommittee meeting. Is that traditionally what we would do?

**Mr. Bisson:** Well, it's up to the subcommittee to decide. We've made those accommodations before.

**Mr. Halonen:** Municipal taxpayers are paying for me to come down.

**Mr. Miller:** Your taxpayers? In that case, I'll ask for unanimous consent that the cost of those who travelled from a far distance be covered.

**The Chair:** Okay. Mr. Miller's asked for unanimous consent.

**Interjection:** Agreed.

**Mr. Oraziotti:** Chair, do you want to refer that to the subcommittee? I don't have a problem supporting that, but is that a discussion that should take place at the subcommittee?

**The Chair:** I'm quite happy to do that.

**Mr. Bisson:** Well, it can go to the subcommittee, but he's got a motion, right? We have to decide whether we're voting for or against.

**Mr. Miller:** For those who ask for it. You haven't got a huge number of people down here and you've limited the time frame, so I think it's a reasonable request.

**Mr. Oraziotti:** That's fine.

**The Chair:** Unanimous consent's been asked for and given? Agreed.

Mr. Miller.

**Mr. Miller:** Since I only have a minute, I'll just go to the habitat question. When a species is listed by the



committee, COSSARO, the protection for habitat at that point in time is quite broad. I think it's any habitat that the species might be found in. Later on, when the species-specific habitat regulation comes into effect, I guess it's more defined. Have you any recommendations, when a species is designated, how it could be more workable for people in the north?

**Mr. Halonen:** Well, if it's going to be workable in the north, like if it's a mill closure or taking stuff from the mill, then I believe that the communities that are involved should definitely be talked to and asked, plus the mill, plus the mine or anything. I believe that we can work around it, and I know I'd help to work around it to save the animal. I don't want any animal dying and disappearing from this earth.

**The Chair:** Thank you, Councillor. Mr. Bisson.

**Mr. Bisson:** I want to thank you for coming down. I understand the emotion that you feel because it's one that's palpable across northern Ontario. I represent the northeast and Timmins-James Bay, and the same kind of feelings exist there. I think it's important to say that you're right, I don't hear anybody in northern Ontario saying, "We're in favour of putting species at risk or habitat at risk." That's our backyard. Quite frankly, there's more to be gained by protecting than there is by diminishing.

That being said, one of the recommendations that was made earlier this morning, I think by one of your counterparts and others, is that we should put in the legislation that at the beginning of the process that we're studying, if a species is at risk and we're going to take a certain amount of land out of circulation on a temporary basis until we make up our minds if it is at risk, we should have the same provision at the end, that you need to take socio-economic impacts into consideration at the beginning and not just at the end.

**Mr. Halonen:** I definitely think that should happen.

**Mr. Bisson:** Thank you.

**The Chair:** Thank you. Mr. Orazietti?

**Mr. Orazietti:** I don't have a question, just a comment. As a fellow northerner, I represent the riding of Sault Ste. Marie, so I'm hearing your comments. Your colleague or your fellow northern representative, the mayor from Terrace Bay, was in this morning and expressed the concern around it as well. It's great to see that the mill is on the rebound at this point. We are certainly doing everything we can. We're working very hard to make sure we maintain jobs and economic development in northern Ontario. That is, I know, one of our community's highest priorities. We're tired of seeing our youth leave and not come back and a lack of opportunity in northern Ontario.

I want you to hear the fact that the northern members—all of them, opposition members as well—are concerned about that particular issue and are working hard in their respective communities to ensure that they're prospering for many years to come, so that your kids are going to be able to live in your community for years to come as well.

I want to also say that this piece of legislation, although I appreciate your perspective, is not about special interests. It's about balancing the needs of protecting endangered species in this province with our economic and social needs as well. I guess I understand why you might be drawing those conclusions and why at times it seems frustrating that some of what may be the agenda is driven by—to use your words—special interests, but I want you to also be aware that there are many members on this committee and other members in the Legislature who are very mindful of the importance of making sure we have a very strong and healthy economy in northern Ontario, and that's an important priority. Thanks for coming down.

**The Chair:** Thank you, Mr. Orazietti.

**Mr. Halonen:** Thank you.

**The Chair:** The time has expired. Thank you very much for visiting us today.

Just looking ahead a little bit, we've got a vote in 17 minutes. So we should be able to get through the next delegation. The one scheduled after that is a teleconference in which the participant will be calling in, so there will be somebody in the room here to answer the phone when we're in voting, so the line won't be ringing busy.

#### IVEY FOUNDATION

**The Chair:** The Ivey Foundation is next, Timothy Gray, program director.

**Mr. Timothy Gray:** Good afternoon.

**The Chair:** Good afternoon, Mr. Gray. You've got 13 minutes to use as you see fit.

**Mr. Gray:** I will be very brief. My name is Tim Gray. I am program director for Ivey Foundation. I'm also a member of the provincial forest policy committee here in Ontario, and I was a member of the Minister's Council on Forest Sector Competitiveness.

I'd like to talk to you about this important legislative initiative and thank you for inviting me here today to do so. I'd like to talk about the need to pass this act and some key elements that our organization feels require improvement before it is passed so that it meets its stated purposes.

The Ivey Foundation is a private, charitable foundation located in Toronto. It was incorporated in 1947 and has made grants totalling \$62.9 million since that time.

As the Ivey Foundation has grown, evolved, it's kept pace with its community. Its roots in London, Ontario, helped establish the city as a centre of health care excellence and home to a leading research-intensive university. Fifteen years ago, the foundation saw a growing need for investment in environmental giving and launched its Biodiversity in Forested Ecosystems program. Today, our Conserving Canada's Forests program provides support for environmental sustainability across the country.

We support policy and law reform, green markets development and applied science research with a focus



on ensuring Canada's forests are conserved and well managed.

What should be in an Endangered Species Act, based on our experience? In our view, supporting development of an Endangered Species Act within conservation policy has some parallels with the funding that we have done to support acute care within the health care system. Both are necessary, both require broader, more systemic action if they are to be ultimately successful, and both better have the right tools and equipment if you don't want dead patients.

So while we would prefer to support efforts that protect abundance, diversity and intact ecosystems, we know based on our experience in southern and northern Ontario that an effective Endangered Species Act is necessary to conserve nature and ultimately ourselves. From woodland caribou and wolverine in Ontario's boreal forest, to the prothonotary warbler and loggerhead shrike in the south, we see that conventional land management practices have not worked well enough to stop these species from rapidly disappearing.

In our view, to be effective, the key elements of this emergency room of conservation action are the following:

(1) A science-based listing: We must ensure that science, not politics, determines the basic facts of whether a species is endangered, threatened or of special concern. What actions come after this listing is of course a conversation that government will lead. But assessing a species' risk of disappearing is a scientific issue, and scientists should decide when society needs to be informed of that risk.

(2) Effective strategies for protection and recovery: The only effective mechanism for addressing the short-term survival and longer-term recovery of an endangered species is to develop a recovery strategy. This strategy must include where it lives, what threatens it, and how to minimize or eliminate these threats. Plans that do not include any one of these three key elements will not work.

1720

(3) Primacy of recovery strategies over other land-use and resource management policy and legislation: Once completed by a team of experts and approved by government, after thoughtful participation, review and consideration by all those with an interest, like some of the folks we heard from earlier today, recovery strategies must be designated as high-level authorities on land use and be mandatory. We must remember that these strategies and actions are written for managing human actions in habitats of species at risk of disappearing forever. A business-as-usual approach will ensure that recovery strategies are ineffectual.

What needs to be changed in the draft bill to help it achieve its purposes?

(1) Science-based listing: The bill currently requires that the scientists who sit on COSSARO make the decision on whether a species is endangered or threatened. This is important and should be retained. Society rightly

leaves the job of identifying and describing science issues to scientists. For example the Intergovernmental Panel on Climate Change comprises scientists, not politicians. But of course, we also leave the important work of deciding appropriate responses to these issues in the hands of elected officials.

The bill should also make it clear that the list of species designated by the provincial body—COSSARO—must include the national COSEWIC-listed species on its list unless new information warrants a different status.

(2) Recovery strategies: Currently, the bill does not include a list of required elements for recovery strategies or management plans. This means that they may not address the critical issues of habitat location and threat identification and reduction. As a response, section 11(2) of the bill should be revised to require that these issues be addressed in a manner similar to other progressive endangered species legislation in Canada.

The act currently also fails to link the content and recommendations of recovery strategies and management plans to the actions to be taken by the minister. Section 11(6) should be revised to ensure that the minister responds in detail to the recovery strategies and management plans, and that these responses, and their rationale, are available for public comment and review in a timely fashion.

(3) Primacy of planned actions over other land use and resource management policy and legislation: Recovery strategies or management plans mandated by the act should require that the species-specific regulations addressed in section 54 require that government actions—those derived from the recovery strategies and management plans—be the basis for the regulations. In particular, these regulations must identify the habitat necessary for persistence and recovery and the actions to be taken to reduce risk and ensure recovery.

Similarly, the permits contemplated under section 17 and the instruments under section 18 will provide exemptions to carry out otherwise prohibited activity in the habitat of an endangered or threatened species. This section is cause for concern, as there's currently no requirement for the minister to ensure that the permit or instrument approved is consistent with the goal of recovering the species.

In real-world terms, this could mean blanket approval for such instruments as existing and unmodified forest management plans being consistent with this act, when it is in fact the failure of forest management to properly provide habitat for species, such as woodland caribou, that has led to their demise throughout the entire region where forestry overlaps with their range. This is not to say that forest plans cannot be a vehicle to implement actions to protect caribou, but to be effective, they need to be consistent with the requirements for recovery contained in the recovery strategies, government actions and regulations under this act. Otherwise, forest plans will not place a primacy on securing long-term caribou persistence and recovery. Developing plans to protect caribou, ensuring ongoing wood supply to companies and



protecting jobs are feasible and practical, and efforts are now under way by conservation groups and progressive companies to make these plans a reality.

It's also important that if the minister wishes to exempt activities or issue permits, these decisions should be subject to independent expert review and none should be allowed to actually jeopardize species, even if they will have some detrimental impact that is unavoidable.

In summary, I would like to ask the committee to address revisions to the bill that ensure a clear linkage from the act of listing a species to the final steps of implementing actions for recovery on the ground. If this chain is broken, the act will not achieve its stated purposes, it will not meet Ontario's commitments nationally and internationally and will allow more species to disappear from Ontario's lands and waters.

In closing, I'd like to thank the 39 members of the Legislature who voted for Bill 184 on second reading, and hope that Mr. Martiniuk, who voted against the bill, likes the changes brought forward by this committee and votes in favour on third reading.

Thank you, and if you have any questions, I'd be happy to take them.

**The Chair:** You've left about six minutes, and we'll all be excusing ourselves when we recess. Starting with the NDP, Mr. Bisson. Two minutes—I'm sorry, you've changed.

**Mr. Peter Tabuns (Toronto-Danforth):** I did.

**The Chair:** You're far better looking than Gilles.

**Mr. Tabuns:** I lost a little weight, and I'm more clean-shaven.

**Mr. Miller:** Great.

**Mr. Oraziotti:** It's been a long day.

**Mr. Tabuns:** Could you give your assessment as to whether or not the MNR and the MOE, as currently resourced, would actually be able to make this act come alive, actually be able to ensure that it's carried out as envisioned by the writers and those who support it?

**Mr. Gray:** I think the allocation of the \$18 million-plus when the act is launched will go a long way to making that possible. It's difficult to project into the future the number of new species that might be listed and how we deal with them, but it's clear that resources are necessary to implement recovery strategies, and this act, without money, would not have worked. I think the way the government has approached it makes sense to me.

**Mr. Tabuns:** And so you feel the \$18 million is adequate? Do you have a sense of the scope of costs that we'd be looking at?

**Mr. Gray:** I don't know the minutiae of the budget of the fish and wildlife branch or other parts of MNR. I'm assuming that the budget that was developed was developed in consultation with the MNR itself so that they could properly implement the act.

**Mr. Tabuns:** Okay. Thank you.

**Mr. Oraziotti:** Thank you very much for your presentation. This issue around COSSARO and the scientific-based body making the decision as to whether a species will be automatically listed or whether or not the minister should be making the decision on that—do you want to

elaborate on that? How do you feel about that, and what do you say to those who say, "Well, these people aren't elected, and it should be the minister who ultimately decides whether or not the species is at risk or is listed"?

**Mr. Gray:** It's an interesting issue, and I used the comparison to the Intergovernmental Panel on Climate Change for a reason. When you have a science issue and society wants to know whether or not that issue should be addressed, I think it's best to leave that decision about whether the issue is important or scientifically valid to the people who have the experience to know so.

In the case of climate change, we internationally listen to what that panel has to say and then politicians get to make the decision about what we're going to do about it, and we have lots of debates about what that should be. And climate change is a good example, again, in terms of the federal government's response to that. But I don't think anyone would argue that we should have all the political heads of state in the world get together and decide whether or not climate change is true. We should leave that to scientists. Similarly, with this act, we should leave the determination of whether a species is at risk to the scientists, and then this act provides lots of ministerial discretion for how to deal with that.

**Mr. Oraziotti:** Thanks for your comments.

**Mr. Miller:** First of all, just a clarification: At the beginning, you said you sat on the Minister's Council on Forest Sector Competitiveness; is that correct?

**Mr. Gray:** Yes.

**Mr. Miller:** So you'd know the state of the forestry sector in Ontario. If you sat on that committee, you'd know how many jobs have been lost in the last couple of years. I'm just surprised, actually, by your comments today.

I talked to a biologist involved with the forestry sector in my riding last week. He came to see me because he wanted me to support this bill. But he also stated how the Crown Forest Sustainability Act already protects endangered species on crown land. Is that correct? You're making it out like the forestry sector is not doing a good job, and yet, from the meeting with a guy who is a biologist working in the industry, he's giving me a very different message.

**Mr. Gray:** It depends on the species. In the case of caribou, which is the one that I was referring to, caribou have receded northward at the approximate northern limit of industrial forestry as it has moved northward over the last 100 years—broad science consensus on that.

It's not that the Crown Forest Sustainability Act or a forest management plan couldn't be used as a tool to address caribou survival, but it would need to be consistent with the provisions of the act and not just a blanket endorsement of the existing approach to forestry, which has in fact caused that species to decline. So it's a question of whether the recovery strategy for that species is the dominant legislation that's going to determine the fate of caribou, or whether it's forest practices, because with that being the situation currently, we're losing caribou.



**Mr. Miller:** Okay. I think we're just about out of time, but I guess in the last 30 seconds, the COSSARO listing: We heard this morning people concerned that it would be biased, that there may be science but it would be biased science. Can you speak to that?

**Mr. Gray:** I didn't hear that presentation, but I think when you get experts in the field of wildlife biology or plant biology who are peer reviewed, sitting at academic institutions or involved working for government, and go through a peer review process, as Dr. Smith was describing, bias is unlikely. I'm not sure how else you could elicit scientific response in a more objective way than the way that this committee is structured.

**Mr. Miller:** So it's peer-reviewed.

**Mr. Gray:** Yes.

**The Chair:** Thank you, Mr. Gray. Thank you very much for attending.

The committee is recessed to allow members to vote. I imagine we should be back in about six minutes.

*The committee recessed from 1731 to 1739.*

#### CREDIT RIVER ANGLERS ASSOCIATION

**The Chair:** Is Mr. Milo in the room? We've lost Mary Long-Irwin.

**Mr. Louis Milo:** I'm here. I have a general statement which I will try to read. I don't know if I'll run out of time for questions.

**The Chair:** There's only one way to find out, and that's to start.

**Mr. Milloy:** Do we have copies of your presentation?

**Mr. Milo:** You do not have copies of my presentation. I've got to keep you in the dark about some things.

**The Chair:** Okay. We're all yours.

**Mr. Milo:** General comments on Bill 184:

The Credit River Anglers Association has expressed support of Bill 184 in principle, but in due course, have grave concerns over the framework of this legislation and how its obligations will be fulfilled under the parameters of current culture within the various ministries responsible for this. We believe that this legislation will result in increased costs and subsequent cutbacks to derived funding. The net potential economic loss to stakeholders and governments will occur without any measurable and quantifiable net gain for species at risk.

CRAA is fully supportive of the recovery of Ontario's biodiversity and the protection of habitat but feel this is not the appropriate path to set forward with. We believe that the appropriate level of consultation on Bill 184 has not occurred in order to capture stakeholder and public opinion in considering its socio-ecologic complexity and its potential to create another regulatory hurdle for citizens to overcome.

Without adequate funding to sustain Bill 184 and without the transparency bills such as this should encompass, we believe the potential exists to create yet another level of complexity with the appropriate guidelines to deliver the service.

Currently, as Ontario enters the streamlining of fisheries management zones, we believe that Bill 184 has not

been introduced into enough of these management zones to receive the appropriate consultation it requires so that all stakeholders have the ability to be represented within their respective FMZ zones. We also believe that each zone has unique opportunities to protect species identified at risk, and each zone should require an adequate stakeholder identification process, review and consultation period. At the very least, Bill 184 should be deferred until these new zones gain approval from a fisheries management perspective.

This legislation was drafted, tabled and debated prior to EBR consultation.

A further point towards the lack of consultation of stakeholders: We question if Bill 184 could address these same stakeholders without the background consultation being done and fear that there is inadequate funding to support the stewardship program in place that currently has the potential to prevent a species from being endangered in the first place. Our friends from OFA agree that the province must be aware of the independent advisory panel recommendation 2.4, financing the implementation of an act. This is most relevant today. It reads, "Adequate resources should be allocated to the start-up and ongoing implementation of the new act because financing the act will be critical to its ultimate effectiveness." We are of the strong opinion that \$4.5 million per year will not even cover administrative, capital and sector development costs to the government and are in agreement with our friends in OFA on this point.

Based on background data, we believe that the appropriate course of action is to allow Bill 184 to be sent to the newly created management zones, once approved, and as a geographical template to allow stakeholders to comment.

We also believe that the proposed bill does not have adequate funding, as evidenced by the estimated capital expenditures of the US government. In 1989, the US Fish and Wildlife Service reported Endangered Species Act expenditures of \$43.7 million; 11 years later, they reported annual ESA expenditures of \$610 million. Independent accountants claim the actual government costs are probably four times that estimate. I can provide background data on that.

While the scale of population demographics may be modelled in a downward trend to reflect Ontario's demographics, in essence, \$4.5 million falls far short of any tangible measurable results. Citizens would be better served if these investments were made to existing stewardship programs.

**Species at risk in Ontario:** This section requires additional input and rephrasing to give ministerial authority and governmental accountability. To date, we feel that the majority of science is not available to determine a species at risk list. It must retain flexibility in order to give the ministry the authority to determine the listing of a species and must be based on sound science.

The newly created Ontario biodiversity strategy has two primary goals: the conservation of Ontario's biological diversity, and the sustainable use and develop-



ment of biological resources. Bill 184 should require that any management or recovery planning for species that are sustainably harvested should be developed in co-operation with key stakeholders. Much of this background data can be captured within management zone stakeholder groups. We also believe that in many cases, particularly in the case of cold water salmonids, major data gaps exist in the final determination of what sustainable harvests are.

**Stewardship programs:** Currently, the fish and wildlife fund, CFIP, is serviced by 28,000 on-the-ground volunteers who draw from an annual \$1-million budget. These same volunteers can have a higher rate of success in the protection and recovery of threatened species through voluntary agreements. The cost to Ontario's citizens is one quarter less and would be far more economical than a bureaucratically legislated program.

CRAA feels that the proposed permit procedures will lead to an onslaught of bureaucratic red tape and, in fact, has the potentiality to provide delays, court challenges and can potentially open avenues for additional proponents in how currently naturalized salmonid populations are managed. Once again, this has the potentiality to be in direct conflict with Ontario's biodiversity and sustainability directive by forcing the hierarchy on how fish populations are managed.

A direct quote from the OFA EBR posting: "Less than one year ago when the province kicked off its discussion paper *Toward Better Protection of Species at Risk* in Ontario, and the extremely limited public consultation that followed, it introduced its intent with the following statement:

"Helping a species at risk recover can be costly and complex. The best course of action is to prevent any species from becoming at risk in the first place, through responsible land use stewardship practices. Proactively protecting species at risk, and precluding the need for recovery actions, goes hand in hand with the province's commitment to a strong economy and healthy communities."

It goes on to state that "The province's *Places to Grow* Act and *Greenbelt* Act are just two examples of legislation that will help ensure protection of Ontario's species at risk."

What it did not attempt to explain is that species-at-risk protection is also served to a greater or lesser degree through the *Provincial Parks and Conservation Reserves Act*, the *Fish and Wildlife Conservation Act*, the *Municipal Planning Act*, the *Conservation Authorities Act*, the *Crown Forest Sustainability Act*, the *Environmental Protection Act*, the federal *Fisheries Act*, the federal *Migratory Bird Act*, the federal *Species at Risk Act* and the existing provincial *Endangered Species Act*, just to name a few.

It did not attempt to explain that species-at-risk protection is also served by a large number of provincial programs and policies: the conservation land tax reduction program, the managed forest tax incentive program, MNR's fish and wildlife management programs, natural heritage protection policies under the *Planning Act*, and

invasive species awareness control programs, to name a few.

We believe there is already considerable legislation in place to prevent species from becoming endangered and significant protection of existing species at risk required by law on the Ontario landscape. The weak link in the species protection chain from preventing species from becoming endangered to recovering endangered species is not deficiencies in legislation, but meaningful incentives for enhanced stewardships and the lack of community involvement in species recovery.

CRAA believes that more would be accomplished to prevent species from becoming endangered in the first place by restricting the scope of legislated protection to endangered species and their habitats while preventing threatened species from becoming endangered through a robust stewardship program.

Ontario's species at risk will not be better protected under the proposed act, and Ontario's species may well be more in peril because the government has failed to consult adequately and meaningfully with an engaged public in the development of legislation; ignore reasoned and constructive advice of land and resource management sectors; underestimated the cost of the legislation; and not provided the necessary legislative or fiscal foundation for critically important stewardship pillars: CRAA and species at risk.

As the largest non-governmental organization with a mandate on cold water fisheries in Ontario, we represent upwards of 5,000 anglers with a keen interest in angling opportunities for salmonids. As a group we have injected over \$3.5 million in specific watersheds of Lake Ontario. In relation to stewardship partners, we are not aware of any other group in the province with such tangible investments in habitat restoration biodiversity and risk prevention of habitat loss and other related work programs in Ontario.

We firmly believe that Bill 184 must be sent back to stakeholders within each management zone, once approved, and the appropriate undertakings be done to support existing management plans.

Bill 184 has the potentiality to negate these management directives, some of which are well into the process. These management plans address many of the proposed changes the bill would offer, but in certain instances they would be diametrically opposed to the very bill.

We believe the potentiality exists that at some point, these very same management plans could be declared non-productive and the thousands of hours invested via steering committees has gone in vain.

We urge you to fulfill your fiduciary obligations and allow this proposed bill to be sent to a broader scope of stakeholders for additional input and to restructure it so that it in fact does have the potentiality to make effective and positive change within the landscape of Ontario.

In its current state, Bill 184 will only cost taxpayers millions of wasted dollars and push back stewardship programs and biological diversity decades, something the province can't afford. Thank you.



**The Chair:** Thank you. You've left about three minutes.

**Mr. Milo:** Lucky me.

**The Chair:** Yes, you did well—starting with Mr. Miller.

**Mr. Miller:** Thank you, Louis, for your presentation. So if I were to summarize, I think what I heard you say is don't spend the money on more rules because there's already enough legislation.

**Mr. Milo:** That's right.

**Mr. Miller:** So instead of spending on bureaucracy, spend it on stewardship?

**Mr. Milo:** That's right.

1750

**Mr. Miller:** You said CFWIP—most people here probably wouldn't know what you meant by that—community fisheries and wildlife involvement program. So that's a million dollars and it's doing a lot of good in the province.

**Mr. Milo:** That's right.

**Mr. Miller:** So that's your message, that we've got enough legislation; be involved in stewardship?

**Mr. Milo:** By far. It's 28,000 people, on average, who get their hands into the dirt and actually work, not in a landscape perspective but actually on the ground, doing the work, identifying these species, doing the work the ministries currently can't due to lack of funding protocols and so on and so forth. You know what? I think that people generally, when they develop a passion for something, are far more willing to take on the task of getting things done.

**Mr. Miller:** And your group was involved with Atlantic salmon, which was extirpated in the province; correct?

**Mr. Milo:** Yes. We were actually the first group in the province of Ontario to introduce Atlantic salmon back into the watersheds—millions of them—before this came up.

**Mr. Miller:** Congratulations on that. I think that demonstrates your point.

**The Chair:** Mr. Tabuns, did you have a question?

**Mr. Tabuns:** Sorry I was late, Mr. Chair.

**The Chair:** No problem.

**Mr. Tabuns:** I'll have to pass. I didn't have a chance to hear the deputation.

**The Chair:** Very good. Mr. Rinaldi.

**Mr. Rinaldi:** Thank you very much, Mr. Milo, and thank you for what your organization does for nature in general.

**Mr. Milo:** Thank you.

**Mr. Rinaldi:** I just want to focus a question on a comment you made: not having enough resources, the \$18 million that's in the legislation. Can you give me some sense what that figure should be?

**Mr. Milo:** You know what? It's hard to model that out. I'm sure through some economic modelling you could do that. If we work on where it is in the States, at

\$600 million, and we model that down, if I had to take a best stab at it, I would say that you're probably talking \$60 million to \$70 million within an MNR that has a budget of \$50 million.

**Mr. Rinaldi:** And I fully appreciate that. Maybe I should have said this before, that we heard from some folks that while it's a good start, it might suffice, nobody really knows. So I guess what I was looking at, when you say it's not enough, how do we judge that? It's fine to compare the US, but I think we are different, and I'm not an expert on that. Just as a statement, I think the fact that there is implemented in the legislation a dollar figure—in all fairness, until we embark on whatever we're going to do, it's hard to come up with a dollar figure.

**Mr. Milo:** That's right.

**Mr. Rinaldi:** I would just suggest that I'm not sure a blanket statement—"It's not enough money"—is fair either.

**Mr. Milo:** If I can quantify that for you, Lake Ontario is a very diverse and very popular sport fishery. It's estimated at \$140 million currently. I'll answer that in kind of a roundabout way. The Lake Ontario management unit is a branch of the Ministry of Natural Resources and has direct control of that \$140-million industry. After salaries, after expenditures and capital costs, it has \$60,000 to do research and assessment. By a far cry, managers within that zone say they need \$1 million. So when we analyze the various parts of fish and wildlife and we look at the budget constraints that they are under, we say to ourselves, "Well, a bill such as this has the potentiality to start basically robbing funds from other sectors of the ministry, and where do we stop it? Where do we find the money?"

So to say that the bill at \$4.8 million is enough, it's hard to quantify that, equally as it is to say that it's going to cost us \$50 million or \$100 million. We can only use that as a template. A lot of times in science when we're looking at data gaps, we look at other science and try to extrapolate data that's relevant to us. Again, this is where we're looking. If we say that the US is costing \$600 million, we have to say to ourselves that potentially, based on demographics and socio-economic positions, it could cost up to \$50 million. But you're right, no one knows, and that's why this bill should go to additional stakeholders so that some of those financial ramifications can be determined.

**The Chair:** Thank you, Mr. Rinaldi. Thank you very much, Mr. Milo, for attending today.

The speaker we had from the Northwestern Ontario Associated Chambers of Commerce has not been in touch. We are going to offer that person some time on May 7 when we hear from the other groups. Having no more people before us, we're recessed until May 7 at 10 o'clock in the morning in room 151.

*The committee adjourned at 1755.*











## **STANDING COMMITTEE ON GENERAL GOVERNMENT**

### **Chair / Président**

Mr. Kevin Daniel Flynn (Oakville L)

### **Vice-Chair / Vice-Président**

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)

Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)

Mr. Kevin Daniel Flynn (Oakville L)

Mr. Jerry J. Ouellette (Oshawa PC)

Mr. Mario G. Racco (Thornhill L)

Mr. Lou Rinaldi (Northumberland L)

Mr. Peter Tabuns (Toronto–Danforth ND)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

### **Substitutions / Membres remplaçants**

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Mr. Norm Miller (Parry Sound–Muskoka PC)

Mr. John Milloy (Kitchener Centre / Kitchener-Centre L)

Mr. David Oraziotti (Sault Ste. Marie L)

### **Clerk / Greffière**

Ms. Susan Sourial

### **Staff / Personnel**

Ms. Carrie Hull, research officer,  
Research and Information Services



## CONTENTS

Wednesday 2 May 2007

<b>Subcommittee report</b> .....	G-1077
<b>Endangered Species Act, 2007, Bill 184, <i>Mr. Ramsay</i> / <b>Loi de 2007</b></b>	
<b>sur les espèces en voie de disparition, projet de loi 184, <i>M. Ramsay</i></b> .....	G-1078
Ontario Federation of Anglers and Hunters .....	G-1078
Dr. Terry Quinney	
Ontario Waterpower Association .....	G-1079
Mr. Paul Norris	
Ontario Forest Industries Association.....	G-1081
Mr. Scott Jackson	
Ontario Mining Association .....	G-1084
Mr. Chris Hodgson	
Ontario Fur Managers Federation.....	G-1086
Mr. Howard Noseworthy	
Mr. Stewart Frerotte	
Greater Toronto Home Builders' Association—Urban Development Institute .....	G-1088
Mr. Neil Rodgers	
Township of Terrace Bay.....	G-1090
Mr. Michael King	
Ontario Bait Handlers .....	G-1092
Mr. Bill Davies	
Environmental Defence .....	G-1093
Dr. Rick Smith	
Ontario Nature .....	G-1096
Ms. Wendy Francis	
Wildlife Conservation Society Canada .....	G-1098
Dr. Justina Ray	
Ontario Federation of Agriculture .....	G-1100
Mr. Paul Mistele	
Township of Schreiber .....	G-1102
Mr. Pat Halonen	
Ivey Foundation .....	G-1104
Mr. Timothy Gray	
Credit River Anglers Association .....	G-1107
Mr. Louis Milo	



G-47

G-47

ISSN 1180-5218

**Legislative Assembly  
of Ontario**

Second Session, 38<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**

Deuxième session, 38<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

**Monday 7 May 2007**

**Journal  
des débats  
(Hansard)**

**Lundi 7 mai 2007**

**Standing committee on  
general government**

**Endangered Species Act, 2007**

**Comité permanent des  
affaires gouvernementales**

**Loi de 2007 sur les espèces  
en voie de disparition**

Chair: Kevin Daniel Flynn  
Clerk: Susan Sourial

Président : Kevin Daniel Flynn  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 7 May 2007

Lundi 7 mai 2007

*The committee met at 1004 in room 151.*

## ENDANGERED SPECIES ACT, 2007

LOI DE 2007 SUR LES ESPÈCES EN VOIE  
DE DISPARITION

Consideration of Bill 184, An Act to protect species at risk and to make related changes to other Acts / Projet de loi 184, Loi visant à protéger les espèces en péril et à apporter des modifications connexes à d'autres lois.

**The Chair (Mr. Kevin Daniel Flynn):** If I can ask members to take their seats, I just want to take a quick look at the agenda. We've had a couple of cancellations, which means at least for the first three presenters we can actually extend the time to 15 minutes, if that's the wish of the committee. The presenters at 10:30 were supposed to be on a videoconference. We're having some problems with their feed, so that may end up being a teleconference. After that, we'll review the times for the others perhaps and see where we are with the clock.

**Mr. Dave Levac (Brant):** Is there an expectation that we would not be able to move people up?

**The Chair:** I think we'll probably be able to do that at 10:30, assuming they're here.

## SIERRA LEGAL DEFENCE FUND

**The Chair:** So let's get started. Our first presenter today is the Sierra Legal Defence Fund, Robert Wright, counsel and managing lawyer. Mr. Wright, you have 15 minutes.

**Mr. Robert Wright:** Good morning, Mr. Chairman, committee.

**The Chair:** If you could save some time at the end for questions, that would be great.

**Mr. Wright:** Okay. Thank you very much, first of all, for the opportunity to speak to the committee. We've had a number of committees this year on important legislation, and this is one of the most important, in my estimation, for what we will be leaving for future generations.

I'd like to point out, first of all, that I'm with Sierra Legal Defence Fund. For those of you who don't know us, we're a group that has people in Toronto and in Vancouver. We've been engaged in the past on the federal Species at Risk Act, largely through our Vancouver office, but also through the Toronto office. So we have

drawn on that experience and also on the collective knowledge of our group to make comments here.

In addition, I notice from the presentations to come this afternoon there are other groups that will be dealing more specifically with some of the boreal issues dealing with the larger species and the concern, for instance, with caribou, caribou habitat, those kinds of issues. I'm pleased to see they will be here as well.

We've been part of what's called the SOS coalition, if you will. If you go on the Web, there are a lot of SOSs. I know we had one with our local public school. We also have worked together with groups such as the Wildlands League, the David Suzuki Foundation, Environmental Defence and Ontario Nature in dealing with our submissions on this issue. You would have had earlier the joint submission from the SOS group, which I have not circulated again. By not circulating it, I'm not downplaying it. In fact, I'd just like to highlight that that really is the guts of the submissions of the most important issues that our groups have considered, and they're somewhat in order, but not to be forgotten are the other issues.

So very quickly on that—I don't know if you keep that paper with you—as a reminder, the first issue that we had on our SOS checklist was the species-specific habitat regulation. The concern there was that although we think this is a terrific framework bill that goes a really long way to putting us out in front of the other provinces in dealing with and protecting species, there is some tweaking that we feel would also be helpful.

On the first point, species-specific habitat regulations—that's sections 54 and 55—in a nutshell, the point was that it is imperative, from our point of view, that the bill be strengthened to ensure that every habitat regulation will provide enough habitat to provide for species protection and recovery and that the development of species-specific regulations will be based on recovery strategies—so tying those two things together. That was our first point and, again, I think you've heard something of that already from some of the other groups, and you will certainly be hearing that further this afternoon.

The second point was recovery strategies and management plans—section 11. What we're asking is that the act require the implementation of recovery strategies. It should also list the key components required to be included in every recovery strategy. In our view, this is an omission that should be addressed by adding a re-



quirement to respond to management plans in addition to the implementation of recovery strategies.

The third point that we dealt with was the exemptions. The exemptions sections are 54(1)(b) and 56. We tied that in with instruments and agreements. Again, there is a specific example of instruments we use in relation to the impact on such species as caribou. Very briefly, because I know for sure that's going to be dealt with this afternoon, the concern is that instruments must also undergo a rigorous test before being deemed as having the same effect as permits issued under section 17. That will be highlighted by our friends from Ontario Nature and the David Suzuki Foundation this afternoon.

One area that I'm concerned about that cannot be lost in the shuffle is the principles. A lot of what we do—and we often intervene at the Supreme Court of Canada simply to deal with legal principles—is to ensure that they are put in the legislation, and it has been bringing a lot of the federal legislation up to date. For instance, CEPA has now got some very good principles imbedded in it. You would not be breaking new ground here; in fact, we'd be falling behind if we didn't have these kinds of principles imbedded in this legislation.

1010

We made a suggestion. It's on page 5 of our submission. The option I prefer is option A, which is, print a section within the act itself that states:

"1.1 In the administration of this act, the minister and all bodies subject to the provisions of this act shall exercise their powers in a manner that protects species at risk and their habitat by using the best available scientific information and by applying the principles of precaution and intergenerational equity."

That's marrying three things: One, best available scientific information—this being scientific-based; second, the principle of precaution, and that's something we worked hard at in the Hudson case—it has been adopted in many pieces of environmental legislation throughout the country, and I don't think there's a great deal of difficulty with that now. And the third one, one of my special favourites, is intergenerational equity. I do a lot of what I do, frankly, for kids. I think we should all be doing that. Had our parents had the science base that we have today, I don't think we would be in the pickle that we are in today, not only in this area, but in climate change, which is hovering out there and will have an unknown impact on anything we do here. So in my view, anything we can do specifically to deal with these issues before the unknown deluge of what's going to come with climate change is extremely important.

There are some things that you just cannot legislate on or are in other jurisdictions, federal, for instance, but this is one where if we don't do something now on this, we're going to be caught by surprise big time with other issues coming down the pipe that we'll have to deal with. Those were the points just highlighting our SOS group.

Very quickly, on habitat, I think you've probably heard concerns about the science listing. We think the science listing is absolutely fundamental and that this act

has brought a good balance—I speak in broad, general terms here—of starting off with the science listing and then moving to the socio-economic issues, allowing flexibility within the mechanisms. If you don't have that science base—anything we do, although we're a legal organization and are seen as a watchdog, is based on science. We don't like going forward on anything unless we have the scientific base to do that, and we shouldn't be doing that here. This is clearly an area that has to be founded in science with the tinkering to come in the second stages. There is plenty of room for the tinkering by the minister and for input of others, but you can't, with respect, mess with that science-based listing.

To conclude, yesterday—and I can see some of you would be old enough to remember this—was the anniversary of Roger Bannister's four-minute mile. Roger Bannister was the first to break through that barrier. It's something that's near and dear to my heart because it happened to be also my birthday. But it's also, I think, an emblem, if you will, of the human spirit breaking through barriers. I think this act breaks through barriers with this science listing. It breaks through it with the automatic habitat protection. Sure enough, the four-minute mile became the gold standard and was quickly surpassed all around the world. However, it was still the breakthrough. I think you folks have an opportunity to make that kind of breakthrough with this legislation. It's a breakthrough in the sense of this one aspect: science listing. It is not turning things on its head. There are other aspects of this legislation that have been pulled in very carefully by the expert committee to take the best that they could. Again, we don't feel that it's perfect, but it's pretty darned good, and we'd ask that you support it and not find that you need to wither away those important sections.

That concludes my discussion.

**The Chair:** Thank you, Mr. Wright. You've left about two minutes for each of the parties, starting with Mr. Miller.

**Mr. Norm Miller (Parry Sound–Muskoka):** Thank you, Mr. Wright, for your presentation. I guess the first thing I'd like to ask you about is, you talked about your experience with the federal Species at Risk Act, and there was an audit that was done on that program that showed that there were a lot of problems with the program achieving results and also costing a lot of money. My question is, do you think the money that's allocated to this bill will do the job, firstly, and what can we learn from the federal program?

**Mr. Wright:** I think it's important that both the federal and the provincial will feed off one another, information-wise. That was one of the deliberate steps by the expert panel, to try to feed off that information. To that extent, there will be some savings through the two working together. I can see that happening. You ended up focusing on the money, although you talked about the problems to start with, and one of the problems was the habitat protection. It's just taking too darned long under the federal—

**Mr. Miller:** On the federal program, they spent, I think, \$200 million over a few years. This bill has \$18



million allocated over four years. Also, results weren't achieved. What I'm asking is, what can we learn from the problems at the federal level, especially with your experience?

**Mr. Wright:** I think that is the main problem. We're one organization—I think we've got three or four lawsuits going on with the federal government now because they failed to act on habitat protection quickly enough.

**Mr. Miller:** So it's the listing mechanism?

**Mr. Wright:** I think the listing mechanism, and secondly, the automatic habitat protection, because you can then dither around on the habitat protection ad nauseam, whereas this act, in making it automatic, will get away from a lot of those issues and you won't be spending a lot of money on something that should have been dealt with upfront.

So I think there are two things: One, we will now have them dovetailing better, but secondly, with the automatic habitat protection, you won't be getting into that lengthy process that you would have had. The third thing to bear in mind is that if we don't get it right here, there is the opportunity to go after, or through, the safety net provision in the federal act.

**The Chair:** Thank you, Mr. Wright. Mr. Bisson?

**Mr. Gilles Bisson (Timmins—James Bay):** Just as a way to follow up on that, we've obviously heard in this committee from those who have concerns with the automatic protection of habitat prior to taking into account what you're going to find at the end. Some are saying it's problematic. It could take out of circulation fairly large chunks of land that could impact on farming, on outdoors outfitters, forestry companies, mining etc. What do you say to those groups?

You're saying clearly, on the federal side, where that's not done, the federal government has been more cautious to take land out of the inventory for protection, while this one would put it in at the front end. What do you say to the forestry types and mining types, and others, who worry that this is a wholesale approach to taking land out of circulation?

**Mr. Wright:** I think that in this particular case, they've got an interim period in which they're dealing with the backlogged species. I wouldn't say that the federal government has been more cautious, as opposed to, perhaps, not doing their job in moving things forward. Clearly, that is a concern, and I think that there are these flexibility mechanisms here to allay those concerns. It was foremost in everyone's mind that those issues be dealt with, so that it could be dealt with fairly. It's not going to be perfect from either side, and there will be ongoing concerns.

**Mr. Bisson:** The follow-up to what Mr. Miller was saying is that if you don't have the dollars in order to do the work that has to be done, once you've set aside land on an interim basis, it may take a while to figure out what is actually going to happen to that territory. It could take whatever amount of time it takes—two years, three years. In the meantime, that land is taken out of circulation. And that's what we're hearing from people coming

before us, from cottagers to forestry types, mining types, agriculture types. They're saying that they need a bit more certainty. They argue the complete opposite of what you've just put together. What do you say to them?

**Mr. Wright:** There's no doubt that we'd all benefit from having greater finances, but I know that this issue is raised in discussions. The ministry is very concerned that it not agree to things that it cannot implement because it doesn't have the ability to do so; for instance, on having independent experts come in and comment on issues. Instead of going outside, they're going to use experts within the ministry to try and allay a lot of those concerns and get on with doing it quickly.

**The Chair:** Thank you. Mr. Orazietti.

**Mr. David Orazietti (Sault Ste. Marie):** Thank you, Mr. Wright, for your presentation this morning. Two quick items: The issue around automatic listing has been raised. I'd like you to comment on those who may suggest that automatic listing is a slippery slope, that it's undemocratic and takes away the minister's discretion that should be there as to whether or not to list a species. The other issue is the makeup of COSSARO, that it might be driven by special interests. What can you comment on in regard to these two questions?

1020

**Mr. Wright:** Listing is an issue I mentioned as being of prime importance that it not be shifted to the minister. I think, through experience, the ministry recognizes that that's one of the key and fundamental issues that must be done right off the start, with the theory being that ain't the end of the picture. That's not the end of the day. There are all these flexibility mechanisms to come afterwards. Also, the minister does have flexibility regarding the recovery strategies on the management plans. The strategy has to be considered by the minister. They have to look at what's feasible and what's going to be implemented. Yes, it's up front, but put it with the scientific experts; depoliticize that issue. It's not a political issue, that part; that is a science issue. Put those factors in—they definitely are important; they cannot be ignored—the economic factors. But I think they properly come in after you get through that initial listing. That's where they should be.

**The Chair:** Thank you, Mr. Wright, for attending this morning. Your time is up.

**Mr. Wright:** Thank you.

#### ONTARIO FORESTRY COALITION

**The Chair:** Our next presenter this morning is from the Ontario Forestry Coalition, Iain Angus? You're obviously not Iain Angus.

**Ms. Lynn Peterson:** Thank you.

**The Chair:** Please make yourself comfortable. If you would, introduce yourself for Hansard. You've got 15 minutes, and if you could leave a little bit of time at the end for questions, that would be great.

**Ms. Peterson:** That would be wonderful. I appreciate it. Thank you, Mr. Chairman and members of the committee.



My name is Lynn Peterson, and I am the mayor of the city of Thunder Bay.

My colleague Michael Power, Mayor of Greenstone, was scheduled to be with me today; however, on Friday, he learned that Minister Ramsay would be visiting Nakina, one of the communities in his municipality, at 11 this morning to make an important forestry announcement. Travel time and distance prevent him from being able to get here in time for the presentation, and he sends his regrets.

I am here today representing the Ontario Forestry Coalition. The coalition represents a broad spectrum of interests including municipalities, labour unions, First Nations, chambers of commerce and the forestry sector. We are a team, and we continue to speak with a single voice on issues related to the future of the forest industry in all of Ontario.

The government of Ontario has made some extraordinary strides in addressing the factors facing the forestry sector. Those steps, earned by our coalition, have saved jobs and mitigated mill closures, but those hard-fought gains are in jeopardy if new policy isn't efficient, if it creates more cost and makes us less competitive in an increasingly tough global marketplace. That's why we've been working to convince the government to make moderate but necessary amendments to Bill 184, in order that we do not lose the ground we've gained in restoring competitiveness.

Our coalition shares many common goals including support for a modernized Endangered Species Act, but we have concerns with the current language in Bill 184. Bill 184, as it is now written, lacks both clarity and balance and presents many unanswered questions, particularly with respect to the impacts this legislation will have on our northern communities.

Among those concerns are Bill 184's provisions for COSSARO. The committee has already been warned that Bill 184 would take away the discretionary power of the minister to rule on species listings and give that decision-making power to COSSARO, an unelected, unaccountable entity. This is also one of OFC's four primary concerns with the current legislation.

The committee heard the president of the Ontario Mining Association, Chris Hodgson, explain that the COSSARO provisions in Bill 184 "contradict the basic tenets of government transparency and accountability. Balanced decision-making requires appropriate consultation and a ministerial role. The people of Ontario expect to be able to hold their elected representatives accountable, particularly for decisions that can profoundly affect their prosperity and quality of life."

Similar sentiments were expressed by the president of the Greater Toronto Home Builders' Association and Urban Development Institute, Neil Rodgers, who said to this committee, "we are troubled by the removal of ministerial discretion and ... the associated delegation of decision-making authority to an appointed body ... which is not accountable to the electorate for its decisions." At the end of the day, COSSARO should be an advisory body to the minister.

Further, OFC urges the government to ensure that COSSARO has representation that provides practitioner and community knowledge, and it must ensure that both northern and southern Ontario are represented. Currently, the proposed Bill 184 restricts the makeup of COSSARO to the scientific and aboriginal communities, eliminating a full half of the knowledge base from the decision-making process. Applied science and aboriginal community knowledge is critical, but so are the other people who earn their living from the land and who depend on our lakes and rivers, who will have the first-hand knowledge of the species numbers and their movements. They're out there in the forest. They know where the animals are.

OFC has requested some modest but necessary changes to Bill 184. One of them is the definition of an "interim habitat." The current definition of "habitat" is far too broad and open to interpretation. The act currently reads as follows: "an area on which the species depends, directly or indirectly, to carry on its life processes, including areas used for reproduction, rearing, hibernation, migration or feeding," and it goes on.

The definition provided under Bill 184 could apply to almost anything and has the potential to unnecessarily impede economic activity with no tangible benefits to species at risk. I would draw your attention to your copy of our presentation to see the definition extracted with red-lined changes that have been agreed to by members of the resource use community that represents 1.2 million jobs in Ontario. You'll note that all we are asking for is just 11 words. At the end of the day, section 2(b) would read:

"with respect to any other species of animal, plant or other organism, area(s) on which the species depends to carry on its life processes including places that are used by members of the species as dens, nests, hibernacula or other residences, but not including an area on which the species does not depend, where the species formerly occurred or has the potential to be reintroduced."

As the Greater Toronto Home Builders' Association said in their presentation last week, "We are concerned that the definition will be interpreted so broadly as to render it meaningless, specifically with respect to the lack of understanding of the meaning of 'indirect habitat.' We believe that a species-specific regulation is more appropriate...." Simply, what is needed is a more site-specific definition that provides for distinct areas of specialized function that are directly relevant to the species' survival.

Finally, Bill 184 does not provide any measure of compensation for landowners or resource users impacted by the legislation. This is inconsistent with the federal species-at-risk legislation, which recognizes that protecting species is to the benefit of all citizens and comes at a cost that must be shared by all parties. We urge the government to ensure that investments made by those operating on the land will not be lost or diminished by provisions of Bill 184.

Members of the committee, it has been suggested that there are those who have been alarmist or fearmongering



over this bill. As a mayor of a community in which livelihoods are at stake, where the value of people's homes, our history and the future of our communities face the consequences of government policy, I do not believe it is alarmist to express our concerns, and I do not believe I am being a fearmonger when I say our communities depend on the sustainable management of our forests and all of our natural resources. We would not jeopardize these resources; they are our livelihoods and our lifeblood. We understand sustainability and resource management better than most people because we practise it every day. Bill 184, as it is now written, leaves our communities, our industries and our economic and social well-being facing more uncertainty at a time when we are already reeling from massive job losses.

As of April 2007, MNR records show that northern Ontario has lost over 9,000 jobs in the past five years. I would urge you to review the material in your packages, including a map of northwestern Ontario showing job loss locations, both temporary and permanent. This committee has already heard from other mayors whose communities have been devastated by mill closures and job losses.

Thunder Bay has lost over 2,515 jobs. Using the MNR formula, for every forestry sector job, there are 3.47 indirect jobs created regionally and an additional 1.65 jobs created provincially. When mills close, the multiplier works in reverse. Based on the 2,515 direct jobs in my city, the regional impact is 8,727 jobs. Using the provincial multiplier, a further 4,150 jobs will be lost across Ontario. That's a total of 12,877 jobs lost. To put that number into context, the Thunder Bay area has lost 4.2% of its entire workforce. If the same job losses were to hit Toronto, more than 115,000 people would be out of work in this city.

1030

This isn't the same industry that was operating in northwestern Ontario in my grandparents' era. Today's industry has undergone significant transformation in recent decades and is among the most progressive to be found anywhere. Since 1994, we have seen the development of class approval for forestry on crown lands under the Environmental Assessment Act and the approval of the Crown Forest Sustainability Act. These two pieces of legislation are among 17 federal and provincial acts that ensure that forest management on crown lands is conducted in a sustainable manner and for all values, including the protection of species at risk. Mining and other activities on the land are also heavily regulated. Through these acts, we are already providing for the protection of species at risk.

As this committee has already heard, several species, such as the bald eagle, have been delisted or downgraded from the species-at-risk list in northern Ontario because of the current environmental practices. These recovering species are a good-news story, and we should be recognizing those measures that are working, not ignoring, replacing or unnecessarily duplicating them. We need the act to recognize, in writing, those standards and practices

already in place. An example is that section 18 should recognize, in writing, the current forest management plans as an instrument.

Even though we're here speaking about forestry, these amendments transcend one industrial sector. This is about more than just forestry. You heard clearly last week concerns raised by resource stewardship groups from across Ontario, including farmers, home builders, mining, prospecting, waterpower developers, anglers and hunters, fur harvesters and bait handlers. We have been, and remain, committed to working with the government to resolve those concerns, but we are disappointed and frustrated that none of our moderate but essential solutions have been put into the legislation and that reasonable expectations for broader consultation have not been met.

As this committee has heard, and I'm sure will hear again, there are many groups expressing concern about some of the provisions of Bill 184. It is noteworthy that to date 75 municipalities, including my own, have passed resolutions and sent correspondence to the Premier requesting broader consultation. Furthermore, the Association of Municipalities of Ontario and the Large Urban Mayors' Caucus of Ontario have also requested greater consultation. The requested consultation is broadly viewed as a critically important opportunity to ensure we get this legislation right and that it achieves the necessary balance and clarity.

With our requested moderate amendments, we can support Bill 184, an act to protect species at risk, but we also need to be pragmatic, efficient and realistic about how we take on that important task. We are here before you to ask for the moderate but necessary changes to Bill 184 that will alleviate economic concerns, provide clarity and effectively protect species at risk. We are asking mostly for recognition of what we currently do. We're asking to clarify the issue of habitat. We're asking for compensation and some changes to COSSARO.

Before I finish, it was reported to me that someone said to this committee that if the cost of this act is a loss of some economic activity, so be it. You know, I find the words "economic activity" really one of the most interesting comments here. It has no face. "Economic activity," as a statement, is easy to throw around. Economic activity is not a thing. It is the product of people, thousands and thousands and, in this province, millions of people. It's people who get up in the morning and go to their work, who raise their children, pay their mortgages, support the symphony and the charities and live a life.

The people in northern Ontario cherish the life that we have in northern Ontario. We cherish the fact that we live in the boreal. We respect the boreal, and we take our life and our livelihood from it. To suggest that anything is just economic activity and you can forget the rest because it doesn't have a face—well, it does. Those faces live in communities, and I ask you to remember that. Thank you.

**The Chair:** Thank you, Mayor Peterson. You've left less than a minute for each party, starting with Gilles.



**Mr. Bisson:** I, first of all, want to thank you for coming. As we all understand, and as a fellow northerner, Thunder Bay has undergone a tremendous amount of bad news over the past while, but let's hope the future brings a better time, let me tell you.

I particularly appreciate your comments made in regard to people in northern Ontario. We don't often say it in these terms but, quite frankly, we live the life of being in connection with nature and being in connection with the boreal forest. I think that needs to be said. I was at the cottage on Sunday, the type of thing we do in northern Ontario, and it was interesting to watch the activities of people out at the lake. It was people with their four-wheelers driving along the Ski-Doo trails and the winter roads that are accessible in the winter, making sure, if there's any garbage, to pick it up. It just needs to be said that we live with nature every day, so I think it's important to say.

Specifically, though, the concern is the interim measure of being able to take land and habitat out of circulation. To what degree do you see that having an effect on your community?

**Ms. Peterson:** It's critical. If you take the land out and you stop the industry and people from working today while you sort it all out and decide, it's going to be one or two years until you get all the rest of the plans in place and all that flexibility is at work. Well, I'm sorry. We all know that flexibility isn't within government. It takes time. In the meantime, you will have shut down communities; you would put people out of work. You take away from them their livelihood, and it's incredibly frustrating when there seems to be no recognition of the very facts that you just talked about. We live there, we work there, and we love and cherish the communities we're in. We love the boreal and we take darn good care of it.

**The Chair:** Thank you. We'll go on to the next question.

**Mr. Oraziotti:** I know Mayor Lynn Peterson is very passionate about northern Ontario, and as a fellow northerner, I am as well. I want to thank you for coming here today and making your presentation. I can assure you that your comments don't fall on deaf ears. If there was a comment that was made at the committee about ignoring economic realities or considerations, I can certainly tell you that we take those very seriously and we're very mindful of them, and that's not something we're prepared to ignore on this side.

**Ms. Peterson:** I appreciate that.

**Mr. Oraziotti:** Thank you very much.

**Mr. Jerry J. Ouellette (Oshawa):** Thank you very much, Your Worship, for your presentation. Can you tell me the difference between a northern bald eagle and a southern Ontario bald eagle?

**Ms. Peterson:** No, but I've got one actually nesting in my backyard.

**Mr. Ouellette:** Thank you. It identifies that there's a separate species in southern Ontario.

Now, this is a bit of a double-edged sword. You had mentioned about the current forest management plans

being implemented. One of the difficulties with that, and I'd like your response on it, is that if they implement a caribou management strategy, it promotes the actual clear-cutting of forests, as Alberta has done. What this does is it eliminates the ability to move forward with the caribou management strategy and allow for clear-cutting. How is that going to impact the industry when it would have actually been a positive aspect for the forest industry to be able to go in and actually do clear-cuts as opposed to what they're currently doing?

**Ms. Peterson:** My understanding of actually taking positive steps on behalf of the caribou is clear-cutting, but it's always a double-edged sword. If you clear-cut and it's for the caribou, where are the moose going to go? Because they're not particularly fond of this. But the fact of the matter is, forest management plans take this into consideration. One of the other things that I'm not sure has been raised in all of this is what if those caribou are already in protected areas? How are you going to manage to make sure that that is happening? Are we going to clear-cut or log protected areas in parks to make sure that the strategy is being applied?

**The Chair:** Thank you very much, Mayor Peterson, for coming today. We really appreciate your presentation.

**Ms. Peterson:** I appreciate it.

#### TEMBEC INC.

**The Chair:** We can move on now. Our next presentation is from Tembec. Mr. Valley, if you would come forward and introduce your team.

**Mr. John Valley:** Thank you very much, Mr. Chairman. My name is John Valley. I'm an executive vice-president with Tembec. I'm joined here today by my colleagues Mike Martel, who is senior vice-president, forest resource management, and Chris McDonell, who is our manager of aboriginal and environmental relations.

First of all, thanks for the opportunity to appear. Since this legislation has not been updated since 1971, it is time so to do. But given that it could be in effect for an equally long period of time, it's critical that a bill that has the potential to affect the environment and the economy of the province for a long time be done in the correct manner.

**1040**

Tembec brings three perspectives to this table.

First, we have operations in six Canadian provinces, the US, Cuba and France. We employ over 9,000 people worldwide and we sell products into every major world market. We know the demands of the marketplace in terms of what is going to be required relative to product quality and the principles behind the manufacture of the product, i.e., proper environmental and resource management, number one; but, number two, we also know the challenge of competitiveness and what it will take for us to be an economically viable entity going forward.

Second, in a proactive and progressive way based on two of our core values—social responsibility and respect for the environment—Tembec has emerged as a leader in



the resource industry relative to environmental initiatives, resource stewardship and operations management.

We manage about 30 million acres of land around the world. Some 21 million acres of that is certified under the Forest Stewardship Council, the most stringent standard applied to forest resource management today. I should point out that Forest Stewardship Council standards are supported by the WWF, CPAWS, Greenpeace, the National Aboriginal Forestry Association, the Sierra Club of Canada and ForestEthics, among others. We have over 21 million acres of audited and certified lands under those standards. We are the world leader in terms of having areas of certified forest, and I guess we bring to you that perspective.

Finally, we employ over 2,000 folks in Ontario directly. Our indirects include about another 1,000. And, by the way, I'm not going to get into a multiplier of 3.47; those are direct, dependent jobs.

I guess, if we're looking at it, we have, in the face of unprecedented challenges created by an overvalued Canadian dollar, high energy costs, foreign competition and trade challenges, had to make some tough decisions in the last 18 months. We bring that perspective to you.

So, Mr. Chairman, I'm going to turn it over to the guys who really know something about this: Mr. Martel and Mr. McDonell. We need change in a very limited number of areas. We're going to talk about four areas only, and we're going to talk, frankly, about the need for very limited, very narrow but absolutely critical change. Mr. Martel?

**Mr. Michael Martel:** Thank you, John, and Mr. Chairman.

First of all, a few comments. Being a forester in Ontario, certainly we have a lot to acknowledge on leading-edge legislation. Class EA and the outcomes and the Crown Forest Sustainability Act are certainly leading legislation from our perspective in Canada in reviewing our activities across the board.

This legislation is something that we're generally supportive of, and we're supportive of the notion of efficient and effective legislation for species at risk. As you heard this morning, however, and in your previous day's meeting, the notion of habitat, as currently applied within the legislation, is simply too broad for us. The notion of habitat as all-encompassing, in our view, could be needlessly ending up with a significant impact on Ontario in tying up vast sections of the province, particularly where we operate, without consideration of important habitat or critical habitat. The well-crafted definition of critical habitat has been provided by others in previous presentations to this committee, and, while we offer no specific wording, we certainly believe there are some good examples that have been provided to you at this point in time. We certainly feel that there is something to be learned from the federal legislation in this regard, and we encourage that, not only for the parallelness but for efficiency overall for people who are left with the employ of the legislation once it's passed.

Secondly, and as previously mentioned this morning, the notion of compensation being unaddressed in the

legislation we feel is somewhat alarming from the perspective that the cost to protect species for all citizens of Ontario, Canada and the planet will be borne by a few.

As also mentioned, we are extremely sensitive to declines in wood supply in northern Ontario. We have been in the unfortunate position of asking people to go home, and that's something we do not wish to repeat. We feel that being more clear around defining critical habitat and being cognizant that there are costs, that there are trade-offs associated with the employ of any legislation—and this legislation in particular—needs to be recognized. This government has done considerable positive work to make Ontario a more competitive environment globally for the forest product sector. We see that a lack of recognition and compensation, in this instance, will erode that good work.

We have two more points. I'll pass those off to Mr. McDonell.

**Mr. Chris McDonell:** Thank you, Mike.

I'd like to speak for a moment or two on COSSARO and plans for species recovery. As a company that has direct forestry operations in four provinces, we're quite familiar with the implementation of species-at-risk legislation nationally and provincially. With regard to the role of COSSARO, the consequences of a species being listed are significant. We appreciate the desirability of COSSARO to operate at arm's length and focus only on science. We prefer, in the federal model, the scenario whereby scientific assessments are made by a scientific body and decisions regarding what to do about those listed species are made by elected officials. Bringing the Ontario process in line with that in place federally would ensure a higher degree of federal-provincial harmonization on Bill 184. This is important to us as we contemplate our operations across the country. Therefore, the inclusion of a listing process that is similar to that enshrined in SARA is worthy of consideration.

The transparency and the functioning of COSSARO are important as well. The legislation does not speak to the form of member qualifications. The term and geographic participation are also important attributes. While extended membership, on the one hand, offers continuity, fixed terms offer some certainty in terms of participation. So we advise that a balanced approach of two-, three- or four-year terms be selected for membership.

My final point is with regard to what occurs on the ground in our forestry operations in places like Timmins, Cochrane, Kapuskasing, Hearst—throughout north-eastern Ontario in particular, and central Ontario as well. We're very active as a company in working with environmental partners on forest conservation. We're very active in developing forest management plans on first a five-year and now a 10-year planning cycle. We've demonstrated our ability and our interest in being proactive in issues such as the conservation of habitat. We see that existing partnerships, such as we have with the World Wildlife Fund and the Ministry of Natural Resources, should be considered as meaningful and substantial input into the development of recovery stra-



tegies. Where such initiatives exist, we feel that those initiatives should go a long way to fulfilling the requirements of species-at-risk planning.

**Mr. Valley:** I guess, Mr. Chairman, I'll wrap up and open it up for questions.

We've tried to demonstrate that (a) we have an exposure to different manufacturing and operating environments and (b) we have an exposure to the demands of the market, today and prospectively, in terms of what they will require in terms of environmental performance.

We look at this legislation being around for quite a while. We bring you the perspectives of a company operating on a global basis in global markets with that corporate social responsibility commitment. We say that if we see the need for modest change, we would hope the committee would take that perspective into account.

1050

**The Chair:** Thank you, Mr. Valley. You've left about a minute for each party.

**Mr. Levac:** Just a short question. There seems to be some discussion—and I've been watching the proceedings, with the implication that government won't be participating because of the third party issue. Is there still a strong belief that government should be the one doing this, as opposed to the arms-length agency? Can you explain a little bit more why it's important for the government to do the decision-making, when we have several examples of arms-length organizations making decisions?

**Mr. McDonell:** In terms of the development of recovery planning, recovery strategies, the government clearly should be the lead agency. The land on which, in northern Ontario, primarily public land—what we're saying is that the opportunity for voluntary efforts to contribute to that are significant, but clearly, government should have the resources and the mandate in which to lead the development of recovery planning.

**The Chair:** Mr. Ouellette.

**Mr. Ouellette:** Do you think that COSSARO should have the ability or be granted or find the ability to look at other jurisdictions and what takes place with animals in those other jurisdictions?

**Mr. McDonell:** Absolutely. The range of some of the species that we're talking about goes across provincial boundaries.

**Mr. Ouellette:** The Hudson-James Bay lowland caribou, calve in Ontario and migrate to Manitoba, where they actually have a hunt there, as an example. Are you familiar with marten guidelines in your offices? Can you tell us, are they consistent from district office to district office for the same species?

**Mr. McDonell:** In terms of implementation?

**Mr. Ouellette:** Yes.

**Mr. McDonell:** They're the same guidelines on the ground. The forest management plans incorporate those guidelines, using the forest management planning team.

**Mr. Martel:** Further on that question, the actual application of the guideline: Is it 100% consistent from district to district? No, it's not.

**The Chair:** Mr. Bisson.

**Mr. Bisson:** That brings me to the forest management plans. What does this legislation mean in regards to the process through your forest management planning manuals? Because currently, we're doing what is being called for in the legislation under our planning manuals. What does it all mean now?

**Mr. Martel:** I think one of the concerns is that it's very uncertain in terms of what it means for existing forest management planning in Ontario. There exist right now legislation, guidelines and people that are very engaged in species-at-risk within the forest regions of northern Ontario, Tembec being one, with a variety of partners and government managers as well. But the legislation as it currently reads is purely additive; there is no harmonization at all. So there's a high level of uncertainty in terms of what it means in the future.

**Mr. Bisson:** Is there any estimate about what kind of impact this would have on your current forest management licences, based on what we know already, that may end up becoming protected habitat in the interim? Is there any estimation of what it means to you?

**Mr. Valley:** Yes. Let me respond to that for a second. In the early 2000s, a number of companies worked very positively in the Lands for Life process. It's something that Ontario should be very proud of. It's a monument. Good set-asides. Within that, however, in addition to reserves, corridors, wilderness areas, withdrawals for areas of natural and scientific interest, we also set aside the industrial estate. Part of the outcome of that process was that industry was going to be able to count on and make the investment in and be able to depend on that industrial estate going forward. The concern that I've got about certain dimensions of this legislation if bounds aren't put on it—the definition of critical habitat, the composition of the committee, the mandate of the committee—is that it will be able to be used as a surrogate for people to get, under this, what they failed to get under an earlier land use debate. They're separate debates.

**The Chair:** Thank you very much, Mr. Valley, for your time.

**Mr. Bisson:** Can we allow him to finish that comment? I'm interested in what you were just about to say.

**Mr. Martel:** There needs to be something that puts in place protection from manipulation. This thing has to have process integrity going forward.

**The Chair:** Thank you very much, sir, for coming today.

#### NISHNAWBE ASKI NATION

**The Chair:** Our next presentation is a teleconference. Nishnawbe Aski Nation, Grand Chief Stan Beardy.

**Grand Chief Stan Beardy:** Hello.

**The Chair:** Hello. It's Kevin Flynn here, the Chair of the committee. We've extended the time for the presentations today to 15 minutes.

**Grand Chief Beardy:** Okay.



**The Chair:** Our apologies for keeping you sitting there for a little while. The floor is all yours.

**Grand Chief Beardy:** Thank you very much. First of all, good morning, ladies and gentlemen. I would like to thank you for providing me with this opportunity to address this committee regarding Nishnawbe Aski's concerns on the Endangered Species Act.

Our territory, Nishnawbe Aski, covers two thirds of Ontario—55 million hectares, 210,000 square miles—and it has 50 First Nations. I would like to begin by saying that the protection of the environment is of paramount importance to Nishnawbe Aski Nation. All of our communities are in some fashion still connected to the land and its resources. That's such a healthy environment, and it's extremely important to us. We want to see a healthy environment, not only for the generations of today but also for the generations of tomorrow. Ontario's new Endangered Species Act has the potential to be an important step toward protecting and maintaining our environment.

NAN fully supports the notions of protecting the endangered and threatened species and their habitats. Every time a species becomes extinct, it is both the environment and mankind that collectively suffer. Many of the species listed in the schedules attached to the act are found in Nishnawbe Aski's traditional territories. It is important to us that these species are brought up to levels where they are healthy, viable populations and habitat.

Given Nishnawbe Aski's concerns regarding the protection of the environment, it is unfortunate that we were not afforded consultation opportunities on this act. We have both concerns and traditional knowledge that should have been incorporated into the document. At this point in time, this act has gone through second reading and we still have not been consulted. This act has the potential, despite the non-derogation clause, to change our aboriginal treaty right to harvest to that of a privilege to be granted by this government via licences or agreements. Obviously, Ontario refuses to recognize the hierarchy of aboriginal uses, in which subsistence harvest comes in second to conservation. Why are these species endangered today? It is not because of misuse by aboriginal peoples; it is due to misuse via years, if not decades, of habitat destruction, over-harvesting, pesticide use and other destructive processes of the non-aboriginal users.

We are also concerned about the potential conflict between those species that Ontario is looking at protecting and those species that are being protected at a national level. Ontario's process looks at protecting species found on provincial land; the federal process looks at protecting species found on federal land. How well is a species going to be protected if one government decides it is endangered within their jurisdiction and the other government decides that it needs no protection within their jurisdiction? Beyond efforts made by First Nations, a provincially endangered but federally un-endangered specimen will receive little or no protection if it enters one of our reserves. That is because upon

entry, it is now on federal land, where on a national basis it is considered to be unendangered. However, if that specimen leaves our reserve and returns to crown land, then it is again considered to be endangered. If true protection of endangered species is to take place, then the protection efforts of both governments must work together at all times in all situations.

On March 20 of this year we were quite surprised to see Ontario MNR media releases on this act which referred to extensive aboriginal consultation having taken place. We were not aware of any consultations with aboriginal peoples. In response to our inquiries to the Ontario MNR requesting clarification on the content of these consultations, we received a letter on March 22. This letter stated that there were discussion sessions held in the fall of 2006 with aboriginals. None of these sessions were held in aboriginal communities. How can you consult with us when you don't come to our communities to hear what we have to say?

1100

Furthermore, one of our staff members attended a session that was held in Thunder Bay. It was clearly stated by our staff person that his attendance at the session was not to be considered as consultation. The MNR staff at this session acknowledged this, saying that these were only information sharing and gathering sessions.

Now, many months later, the MNR is saying that we were consulted. We do not appreciate these types of dealings on the part of the government. This same letter made an offer to us to make additional comments via the Environmental Registry or the EBR. Many times we have made the point that the EBR is not a consultation process. To complicate this further, many of our communities do not have access to the registry.

The other key point that I wish to make in reference to this March 22 letter is that it mentions a discussion paper that was sent to our communities in May 2006. At this time, comments on the paper were sought. NAN, Nishnawbe Aski Nation, does not consider the sending of a document with a solicitation for comments to our communities or any other organization as consultation.

Our position on this has also repeatedly been given to the provincial government for many years now. Whenever others are engaged in processes that will impact the environment, especially that comprising NAN's traditional territories, it is of paramount importance that they engage us in meaningful consultation. We cannot endorse any process, no matter how important it is, that does not consult with us and afterwards incorporate our concerns, knowledge etc. into the solutions. Such is the case with Ontario's Endangered Species Act.

In consideration of these aspects, on March 29 of this year, the Nishnawbe Aski chiefs passed a resolution rejecting the application of this act in our traditional territories. This ban is to remain in place until meaningful consultation has taken place and our concerns have been addressed.

To assist the province in engaging our communities in meaningful consultation, we are pleased to say that the



third edition of NAN's consultation handbook was released this past March.

On April 16, the MNR again invited us, with only two weeks' notice, to attend another discussion session pertaining to this act. Again, these meetings do not construe meaningful consultation, even if they were to be held in aboriginal communities, which they were not. The consideration of these points, coupled with the fact that we cannot allow the MNR to say that we were again consulted when we were not, forced us to decline the MNR's offer.

In closing, I would like to say that NAN does not like rejecting an act that is designed to protect endangered species. We have great respect for all species, but it is this same respect that forces us to reject any process that does not respect our respect for the environment. NAN wishes to work with those who wish to work with us. Until such time that this provincial government recognizes the importance of working with Nishnawbe Aski and other aboriginal groups in protecting all Ontario species at risk, these species will never truly be protected.

Thank you, Mr. Chair. That is my statement on the act.

**The Chair:** Thank you very much, Chief Beardy. You've left about five minutes. Would you like to answer some questions?

**Grand Chief Beardy:** Sure.

**The Chair:** Very good. Let's start with the opposition party, then.

**Mr. Ouellette:** Good morning, Grand Chief. It's Jerry Ouellette. Sorry you're not here. Actually, I have another load of hockey equipment for you. I was hoping you'd take some back with you.

**Grand Chief Beardy:** Thank you very much.

**Mr. Ouellette:** Currently, all your bands are operating under treaty, are they not?

**Grand Chief Beardy:** Yes. We have aboriginal treaty rights like most of the other First Nations in Canada.

**Mr. Ouellette:** So do you think the reason there was no consultation with you or your bands was because section 82 of the Canada act says that treaty rights supersede provincial law and that it wouldn't matter anyway?

**Grand Chief Beardy:** Our position is that my leadership as chief has given me the mandate to try to work with the governments to develop partnerships—

**Mr. Ouellette:** As always.

**Grand Chief Beardy:** —as always, and I think it's really important that we make an attempt to work with the Ontario government in this case, because we have the same interests as the act.

**Mr. Ouellette:** So how do you think that, for example, particularly with wolverine being listed—most of your First Nations communities would be the predominant trappers of wolverine in the province of Ontario. How do you think that they will deal with the wolverine issue in your parts of the province?

**Grand Chief Beardy:** For us, since we still depend on the land for our survival, for our existence, that's why it's so crucial. We had thought that we would be consulted in

developing this act, because in some ways, it infringes on our livelihoods.

**The Chair:** Thank you, Chief Beardy. We're going to have to move on to Mr. Bisson.

**Mr. Bisson:** Good day, Chief Stan. Gilles here. How's it going?

**Grand Chief Beardy:** Oh, pretty good, thank you.

**Mr. Bisson:** Good. I'm glad you're able to participate. I think you got to the nub of the argument. I take it what you're saying is that, number one, you are stewards of the land and, as always, protect the habitat and protect the animals that live in that habitat. But what you're upset about is that even though you've signed treaty with the provincial government—and that's the important point here, that the province did sign—you don't feel that they can do this without you. What they're doing is doing it without you. That's basically what you're saying.

**Grand Chief Beardy:** Exactly. That's what we're saying, that again we felt left out because the area that's being looked at—I mentioned that our territory covers two thirds of Ontario, and that's where the animals that need to be protected are mostly found.

**Mr. Bisson:** Now, there are a number of instances in the past—Polar Bear Provincial Park up in Peawanuck, places around Osnaburgh and others—where lands have been taken out of circulation by the province without the consent of the First Nation or, quite frankly, even the knowledge. Do you fear that this could happen in regards to this legislation, in regards to the interim powers of withdrawing land from the land base?

**Grand Chief Beardy:** Yes, because my concern here is that in the long term—we signed treaty. One of the main objectives of signing treaty with the settlers is one of relations on economics. We want to participate in the economy. We have great concern that by having this act, it can be invoked, it can be activated by a small group of people to prevent us from participating in resource development.

**Mr. Bisson:** So it could impact not only the social aspect of life in your territories but also the economic?

**Grand Chief Beardy:** Yes. It very much endangers our existence by being left out.

**The Chair:** Thank you, Chief Beardy. It's time to move on. Mr. Oraziatti.

**Mr. Oraziatti:** Thank you, Mr. Beardy, for taking the time to make comments today. I appreciate it. I understand that there were letters sent to about 17 First Nations, of which the Nishnawbe Aski Nation was one. I understand that you've received a letter. There were 10 sites where discussions took place, including Kenora, Sioux Lookout and Thunder Bay. I'm just wondering, have you submitted anything in writing in terms of suggestions as to how to strengthen this act? Going forward, we're all concerned about protecting endangered species in the province of Ontario. Has there been anything that you've provided to MNR or to the province in writing?

**Grand Chief Beardy:** Yes, I submitted our consultation handbook. I mentioned that its third edition came out. Our consultation book is translated into the



three language groups that cover our territory: the Cree, Oji-Cree and Ojibway. Our consultation book clearly lays out the engagement process that needs to take place when we look at outside interests. Our consultation handbook basically was rejected by the Ontario government. They said that it did not meet their criteria.

**Mr. Orazietti:** Mr. Beardy, we're interested in hearing what you have to say about this. Are there specific aspects of the bill, in terms of you having an opportunity to review it, that would help to make it stronger? Can you identify anything specifically in the bill that you think the Ontario government needs to do to help strengthen legislation to protect endangered species in Ontario?

1110

**Grand Chief Beardy:** I guess my point is that talking about specifics of the act is to remain with the Ontario government, and I do have a treaty with them, a treaty which we signed 100 years ago, that clearly lays out that we're supposed to be equal partners when we're dealing with natural resources and the land as well as species.

**Mr. Orazietti:** Thank you.

**The Chair:** Thank you, Chief Beardy. I think Mr. Bisson has a very small point.

**Mr. Bisson:** A very small point, Chief Stan: I take it that what you're looking for is respect for the sovereignty that you have on the land, and you need the legislation amended in some way to reflect that?

**Grand Chief Beardy:** Exactly. That's what we're looking for.

**The Chair:** Thank you, Chief Beardy, for being with us today.

**Grand Chief Beardy:** You're most welcome.

**The Chair:** We've got three more delegations. We're at 11:10 a.m. What I'm sensitive to: We do have to recess at exactly 12 o'clock and I don't want to short-change anybody of time. The last presenter today is Gillian McEachern, who will be starting somewhere around 11:45. If we keep firmly to the timelines, we'll be able to hear from all three groups and give them 15 minutes each. With the concurrence of the committee, that's how we'll proceed.

#### SIERRA CLUB OF CANADA, ONTARIO CHAPTER

**The Chair:** Let's go to the Sierra Club of Canada, Dan McDermott.

**Mr. Dan McDermott:** Good morning. Thank you for this opportunity to address you on this very important piece of legislation.

Bill 184 is a long-overdue upgrade of Ontario's current and woefully inadequate endangered species regime. The mandatory science-based listing of species and the protection of habitat upon which these species depend are significant improvements on the status quo. With some improvements, Bill 184 could provide Ontario with an Endangered Species Act that would actually protect endangered species. The Sierra Club of Canada's core concern is that the bill does not guarantee the protection

of adequate habitat to provide for species protection and recovery. Without this commitment and clarity, the Sierra Club is concerned that development pressure will continue to eat away at habitat necessary for species survival.

The survival of woodland caribou in Ontario will be achieved only through rigorous protection of their already reduced natural habitat. Sadly, there is ample evidence that some see the pursuit of short-term economic gain as trumping the need to protect this iconic species. I'm a member of the Ontario Biodiversity Council. When I was appointed to this advisory body two years ago, I stated that I was accepting this appointment to work toward the protection of woodland caribou. I noted that the Environmental Commissioner of Ontario, Gord Miller, had already predicted that woodland caribou could vanish from Ontario by the middle of this century.

At the most recent Ontario Biodiversity Council meeting, I raised the issue of the need for Bill 184 to protect the remnant habitat of woodland caribou. I was shocked to hear that all members of the council did not share this concern. In fact, the representative of the Ontario Forest Industries Association went so far as to suggest that many scientists and environmentalists were dramatically overstating the amount of habitat necessary to protect woodland caribou. He stated that his association had access to science indicating that woodland caribou could make do with a much smaller undisturbed boreal forest range than commonly believed.

The Sierra Club and all of us have heard this line before. Just as the deniers of climate change will always be able to cite some scientist who will disagree with the overwhelming majority of global experts, so too will the vested interests profiting from the destruction of Ontario boreal forest argue that caribou don't need the large, undisturbed boreal habitat that the vast majority of scientists state is necessary for the species to survive. In fact, I'm quite sure these vested interests are prepared to continue making this argument down to the last caribou.

It is your duty as the elected representatives of the Ontario public to ensure that our province's biodiversity is preserved. The pressures of climate change will make this task more difficult. In light of this inconvenient truth, it is necessary for Bill 184 to include the precautionary principle in the bill and not just the preamble.

The emblem on the California state flag includes the image of a bear no longer found in the state of California. The question before us is clear: 40 years from now, when an Ontarian holds a Canadian quarter and looks at the image of a caribou, will that person feel a sense of pride or a sense of deep loss and shame?

Please, please do the right thing for woodland caribou and for the natural legacy we leave our children. Ensure that Bill 184 protects Ontario's biodiversity and the habitat that supports that biodiversity.

**The Chair:** Thank you, Mr. McDermott. You've left about three minutes for each party for questions, beginning with the government side.

**Mr. Orazietti:** Thank you for your presentation. Can you comment for me on the automatic listing with respect



to endangered species and COSSARO, the scientific body that will be charged with the responsibility for this, perhaps in light of those who might say that this takes away the democratic process, that the minister should have discretion to determine whether or not the endangered species should in fact be listed?

**Mr. McDermott:** If it's an Endangered Species Act that's designed to protect endangered species, I think we should trust the scientific designation. If a species is endangered, it should be listed; if it's not, that's another matter.

**Mr. Oraziotti:** Thank you for your presentation. I don't have any further questions, Chair.

**Mr. Ouellette:** Thanks very much for your presentation. I think a significant number of us are very concerned with the woodland caribou predominantly, as you mentioned. How many woodland caribou do you estimate are in the province of Ontario currently?

**Mr. McDermott:** I'm not a wildlife scientist, so I don't have those numbers.

**Mr. Ouellette:** Any idea what the numbers would be Canada-wide?

**Mr. McDermott:** I think we're addressing in the Ontario act the Ontario range, which we do know is substantially under stress. There was an expansive article in the *Globe and Mail* a couple of months ago where someone from the Ministry of Natural Resources postulated that we wouldn't make the decisions that would allow for the survival of woodland caribou in Ontario.

**Mr. Ouellette:** Are you familiar with caribou management strategies for forestry practices?

**Mr. McDermott:** Not in detail, no.

**Mr. Ouellette:** The main way to manage it, so you understand, is that they do massive clear-cuts in order to promote old growth, because it's the feed inside those forests that they require. It takes many years for the mosses and lichens to grow, which means that in Alberta, for example, which implemented the woodlands strategy, they promote clear-cutting in order to allow the forest to sustain those lives for long periods of time, to allow the undergrowth to live. So that would require massive clear-cuts in the areas that you're talking about for woodland caribou. How would you feel about that?

**Mr. McDermott:** My understanding is the science is pretty clear. Woodland caribou are a boreal-dependent species.

**Mr. Ouellette:** Yes.

**Mr. McDermott:** They require large, undisturbed tracts of boreal forest. Our best management strategy is to leave those large, undisturbed tracts alone.

**Mr. Ouellette:** So not utilize them or promote them at all?

**Mr. McDermott:** I'm suggesting that boreal habitat in an undisturbed state has been determined to be necessary for the survival of woodland caribou. Woodland caribou currently occupy that area. We should manage that area in a manner that allows for the woodland caribou to survive in their natural habitat.

**Mr. Ouellette:** I've met a significant number of MNR biologists—prior to becoming elected—who indicated that there are significant pockets of woodland caribou and there should be some studies done on that, in that the feeling was there were probably in excess of 10,000 animals in the province in three key main areas.

One of the problems, though, as I mentioned earlier on with the other groups, is that currently—and the example I used was the barren ground; it's actually a cross between barren ground and woodland in Hudson-James Bay. They calve in Ontario and migrate to Manitoba, where they have a season on them and are allowed to hunt. How do you think Ontario should deal with that issue?

Another woodland area is up in the Kenora area, just north of there in the Woodland Caribou Park. They live in Ontario and migrate to Manitoba, and they hunt there. How can Ontario deal with that issue?

**Mr. McDermott:** I would certainly hope that the government of Ontario would be in communication with the government of Manitoba and the government of Canada toward the survival of the species.

1120

**Mr. Ouellette:** Some of the difficulty is that species, although the numbers may be somewhat more limited here in Ontario for, for example, barren ground, as compared to Quebec, where they have an overabundance of animals, they need to manage that herd a little bit better—the difficulty is, there is no cross-border communication on managing a lot of these. Ontario is one of the few jurisdictions Canada-wide that has species-at-risk legislation. Ontario was the first province in Canada to enact the legislation in 1971 and there are a significant number of others that still have to catch up. So don't you think that an overlying federal legislation would have a greater impact so that it deals with all provinces as opposed to just Ontario?

**Mr. McDermott:** Certainly, migratory species ought to be managed with a strong role for the federal government. The Sierra Club of Canada would hope that the governments of Canada would get together to come up with strategies that would allow these species to survive and flourish.

**The Chair:** Thank you, Mr. McDermott and Mr. Ouellette. Thank you very much for coming today.

## ASSOCIATION OF MUNICIPALITIES OF ONTARIO

**The Chair:** We'll move on, then, to a presentation from AMO. Mr. Reycraft is with us today. Mr. Reycraft, if you would come forward and introduce your guest. The floor is all yours.

**Mr. Doug Reycraft:** Good morning, Mr. Chairman. My name is Doug Reycraft. I'm mayor of the municipality of Southwest Middlesex and president of the Association of Municipalities of Ontario. I have with me to my left Brian Rosborough. Brian is the senior policy adviser—the policy director, I guess—for the association.



Our organization represents over 400 municipalities in the province, all of which work in a partnership with the provincial government to provide various services to the citizens of Ontario. I'm pleased to have this opportunity to present our views with respect to Bill 184.

Let me begin by stressing that municipalities are strongly committed to species stewardship and environmental protection. We share the objectives that are embodied in Bill 184 and we commend the government for its efforts to promote the protection of endangered species in Ontario. But while we agree that protection of our species at risk is essential and that the act should be reviewed, we do have a number of concerns which we feel need to be addressed.

First, it is essential that the potential impacts of this legislation on the economic health of our communities be fully and carefully considered. Many of our members are concerned that Bill 184 will adversely impact industries such as forestry, mining and agriculture, all of which fuel local economies in rural and northern Ontario. Should this legislation affect these industries, it could also imperil the communities that depend on them for jobs, tax assessment and, ultimately, prosperity.

AMO is pleased to see that a degree of flexibility appears to be built into the legislation to allow for pragmatic decision-making. Presumably, this is to protect important economic drivers like forestry and agriculture, as well as for the protection of new economic activities with development potential.

Still, municipalities need added assurance that new legislation for species at risk will not cause undue economic hardship on rural and northern communities. Many of our members are especially concerned with the definition of habitat in section 2 of the act, which classifies an animal's habitat in the broadest terms; that is, it includes areas used not just for critical life processes but also areas of migration and general feeding. Many species migrate across lands without directly depending on them and they do not necessarily return to the same place every year. There is significant fear that broad swaths of land could be suddenly off limits to activities such as agriculture, forestry and mining, which are critical to the sustainability of many Ontario communities.

In addition, it appears that the recovery strategies outlined in Bill 184 could have significant socio-economic impacts—impacts which have not yet been calculated. Should this legislation restrict land use further, there will be ramifications for local industries and the people who depend on them. Subjecting each new recovery strategy to a socio-economic assessment would help mitigate these impacts and ensure that local economic health and viability are taken into account. Communities need some assurance that their welfare is balanced with that of species at risk. But as it stands, there is no mechanism to ensure that community interests are considered.

The removal of ministerial discretion for the species-at-risk-in-Ontario list and the delegation of decision-

making to COSSARO, the Committee on the Status of Species at Risk in Ontario, a science-based body, means that there may be no meaningful way for local interests and community knowledge to be factored in. While scientific expertise and aboriginal traditional knowledge are to be reflected, community knowledge is not. Given that these communities will be most affected by the decisions that COSSARO makes, it would be just to include them in the process. Resource-based and agricultural activities are the mainstays of many rural and northern communities. Any legislation that affects these communities needs to be balanced with local interests and ensure that local concerns are reflected. People from rural and northern areas are perhaps the most familiar with the species in their region. Discounting their contribution not only undermines their interests but does a disservice to the cause of species protection.

Another item of concern relates to the lack of integration with other legislation. It is currently unclear whether the proposed legislation will supersede municipal decision-making under the Planning Act. A municipality's planning decisions require consistency with the provincial policy statement, or PPS, as well as due diligence with respect to endangered species. Given these pre-existing requirements, AMO would like some assurance that municipal decisions under the Planning Act will not be superseded by the new legislation.

As it stands, Bill 184 and the PPS contain different tests to determine activities that would be allowed to occur within the habitat of threatened or endangered species. While the PPS generally prohibits development and site alteration, the tests under Bill 184 are founded on a net gain or no-net-loss approach. These differences could cause confusion for local decision-makers and lead to inconsistent interpretation across the province.

Already, there is a bevy of legislation—for example, the Mining Act—that affects land. Other legislation—the Clean Water Act, for example—contains supersedence provisions. The management of land and related processes is becoming increasingly complex. There is an urgent need for more integration and coordination from the province.

By way of conclusion, I'd like to stress that AMO and our member municipalities remain committed to the conservation and recovery of species at risk in Ontario. We applaud the government's efforts to make improvements to the systems currently in place. However, the proposed legislation may need to be refined if the interests of communities and the people who live there are to be respected and implementation is to occur effectively. We welcome further opportunities to work with the government to ensure that the legislative proposal is a valuable tool for species protection while preserving the health and livelihoods of all Ontarians.

Thank you for the opportunity to make a presentation.

**The Chair:** Thank you, Mr. Reycraft. You've left about two minutes for each party to ask questions, starting with Mr. Bisson.

**Mr. Bisson:** Thank you very much for your presentation. One of the things that was said by an earlier



presenter that has sort of got me thinking in that direction is that when we went through the Lands for Life process—which was a difficult process to undertake, but at the end of the day, I think everybody has pretty well bought into it—one of the principles was that there be trade-offs. If you set aside tracts of land that are going to impact on mining or forestry or anglers—whoever it might be—there would be an offset.

Again, just to put it on the record, I don't think anybody who has presented here really is in opposition to the intent of the legislation. I think it's how we get there. Do there need to be provisions similar to what we had under Lands for Life to offset? For example, if a habitat is going to be protected, and let's say it takes out of circulation X amount of fibre from a forest company or whatever, there is some sort of trade so that they are made whole, that they're not on the negative side of the economic side of this. And I guess the second question is, how easy is it to do that? That's a tough question.

**Mr. Reycraft:** As I indicated in the presentation, generally we support something in the legislation that provides for increased consultation with local communities that are going to be affected by any decisions. That kind of consultation allows for procedures or agreements or compromises, such as you suggested, to be implemented in such a way that species at risk are actually fully protected, but at the same time we avoid serious, negative socio-economic impact on local communities. So those kinds of agreements can be worked out if you involve the local community in a consultation before the final decisions are actually made. How easy is it to do? Consultation and negotiations resulting in compromises are not always easy to implement, but certainly, if you look at the opportunity to avoid unexpected negative consequences from any action, the effort is worthwhile.

1130

**Mr. Oraziotti:** Thank you, Mr. Reycraft, for your presentation. You made some very good points and we'll certainly be considering those during the next few days. I can let you know that we are also very concerned about balancing local community interests as well as economic priorities, while ensuring that we do more to protect endangered species in Ontario. So thank you for making your presentation today.

**Mr. Ouellette:** Thank you very much for your presentation. I'm just going to mention something. First of all, my concern with this legislation is such that the process that takes place will remove the political input. The removing of the authority from the minister's office puts it onto somebody else's responsibility. At that point, the ability to deflect any necessary movement to protect species—it then is removed from the political ability; the minister can now say, "It's not my responsibility. They're the ones who are responsible. Talk to them."

As the individual who signed off and protected more species at any one time than anyone else, I can tell you the process is currently there now. What needs to take place is the political will at the minister's level to make it

happen and to bring it forward to the cabinet table to push it through, and that's where the difficulty is.

My concern here as it applies to AMO is, do you think that eventually a species-at-risk study will be necessary before advancing and moving into developmental areas such as protecting—for example, what happened in Aurora with the Jefferson salamander or, in other cases, the loggerhead shrike; large tracts of areas were shut down because supposedly this was taking place, and it will be necessary to have a species-at-risk study before you can advance those developmental areas.

**Mr. Reycraft:** I guess I'll respond this way: We would prefer that the decision-making about those kinds of studies occur at a level where there is political accountability, that it not be placed entirely in the hands of appointed officials who are not so accountable to local communities. So while we appreciate the flexibility that seems to be built into the legislation, there remains a concern that that flexibility might not be exercised in a way that reflects the best interests of local communities, and particularly their socio-economic best interests.

**The Chair:** Thank you for attending today, Mr. Reycraft and Mr. Rosborough.

## FORESTETHICS

**The Chair:** Moving on to the last delegation of the morning: ForestEthics. Gillian McEachern, please come forward. You have 15 minutes, and the floor is all yours. If you would leave some time near the end for questions, I'm sure the committee would appreciate that.

**Ms. Gillian McEachern:** Thank you. I'd like to begin by thanking the committee for the opportunity to speak to you this morning about Bill 184.

ForestEthics is a non-profit conservation organization. Our work focuses on building solutions to protect endangered forests, with a particular focus on creating market leverage for conservation solutions.

To begin my presentation, I'd like to step back a bit from the specifics of the bill and place it within a broader context that it is occurring in. Then I'll briefly touch on a few key areas within Bill 184 that are really quite essential and that we'd like to see strengthened.

The forest industry in northern Ontario is facing tough economic conditions. Several factors have contributed to this: the ongoing softwood lumber dispute, the rising Canadian dollar, increasing competition from low-cost southern plantations, consolidation within the sector, and a changing demand for commodity products, which Ontario happens to produce a lot of.

It's become clear over the last few years that business as usual is no longer an option. As a result, many mills have closed across northern Ontario as businesses struggle to remain competitive in this changing global marketplace. The forest industry is an important economic player in northern Ontario, and when mills close it hurts communities. This government has dealt with the impacts of that quite directly, and some members on this com-



mittee have dealt with those impacts in the communities they represent quite closely.

At times, environmental regulations have been blamed for the crisis facing the forest industry. There has been a perception that improving consideration given to ecological values, such as species habitat and forest management, has caused the amount of wood to be harvested to drop, and that that drop in harvest level has put mills in trouble. It must be noted, though, that the amount of wood cut from our public forests has increased over the past 10 years, during a time when various guidelines were put in place to try to minimize the impacts of logging on some species. This is not to minimize the efforts some members of the forest industry and the government itself have made to try to improve the way we're looking after species in forest management.

One example related to harvest levels is that in 1990, seven million cubic metres of wood was cut from north-western Ontario. By 2003, this number had risen to 11.3 million cubic metres. At the same time that Ontario's forest sector is restructuring and needing to find a path to remain competitive, the business case for sustainable forest management is mounting. The expectation for corporate social responsibility and environmentally responsible investment and procurement is growing. Purchasers of Ontario's wood products are now demanding that wood be harvested sustainably and that the habitat needs of species such as woodland caribou are met.

A couple of examples of this: The global market for products certified by the Forest Stewardship Council is now estimated to exceed \$5 billion annually. Over 200 US companies have committed to buying ecologically responsible products, with a preference for Forest Stewardship Council products. FSC is a system of third party certifications that verifies that wood comes from well-managed forests.

Some of these companies that have made these commitments, like Home Depot, buy a substantial amount of product from Ontario. Tom Katzenmeyer is the senior vice-president of Limited Brands. He recently stated, "The growing controversy about logging in caribou range is of serious concern to us, and we want to ensure that our paper consumption does not contribute to the demise of endangered species."

Limited Brands is the \$10-billion parent company to Victoria's Secret. In case you're wondering what a lingerie company has to do with logging in Ontario, Victoria's Secret sends out 350 million catalogues per year, making them a very large paper consumer. Last fall, they announced that they would stop buying paper from a company logging in caribou habitat in Alberta and BC. Now they're looking to replace this \$100-million contract, and if they're going to turn towards Ontario, they'll want assurances that caribou are being adequately protected in the province.

Ontario is well-positioned to take advantage of this demand for more sustainable wood products. Nearly 30% of the province's forests have already been FSC certified. The provincial government has the opportunity to enable environmental leadership within the sector.

Given these changes, a strong Endangered Species Act will help Ontario forest companies remain competitive by responding to the growing market demand for green products. We often talk about the cost of environmental protection, but in this greening market, we also need to consider the cost of not protecting species at risk.

Now I will quickly go through a couple of the key areas of the act that I'd like to reinforce, and suggest strengthening on some of them. The first one is science-based listing. Bill 184, as we've heard, requires COSSARO, a committee of scientists, to make the determination of whether or not a species is at risk. This is a fundamental aspect of strong endangered species legislation: The status of a species is a scientific question. How we respond to that status is a broader question that needs to incorporate socio-economic considerations. There is flexibility in the bill right now in how the government responds to species listing to address those concerns. The current section should stay as it is.

The second area I'd like to touch on is recovery strategies. The current version of the bill requires the minister to respond to recovery strategies. Instead, we would like to see the minister implement recovery strategies. Additionally, the contents of recovery strategies are not included in the current description. We'd like to see more detail provided around this to clarify that recovery strategies should include the identification of habitat for the species, threats to the species and a description of the measures taken to help recover the species.

#### 1140

The third area I'll touch on relates to species-specific habitat regulations. The delineation of habitat needed by species is an essential part of recovery planning. There are two changes that need to be made to strengthen this aspect of the bill—this is related to sections 54 and 55. First, the species-specific habitat regulation should ensure that the regulations will protect enough habitat for species protection and recovery. As currently written, the regulations could scope the habitat to an area much smaller than is actually needed. Secondly, the development of these species-specific habitat regulations should be based on the habitat identified in recovery strategies. Currently, there is no link made between recovery strategies and the habitat regulations.

The fourth area I'd like to touch on relates to major exemptions. There are a few areas that need to be strengthened related to major exemptions in this bill. The SOS coalition has provided detailed recommendations on most of those. I'll focus my comments on section 18. This section allows for activities approved by instruments to be exempted from the prohibitions of the act. As currently written, this section could allow for forestry activities approved by forest management plans, which cover the majority of Ontario's public lands, to be exempted. This potentially creates a big problem for the recovery of species at risk in the managed forest; in particular, woodland caribou. It would allow existing forestry activities to be exempted without any additional



consideration for the recovery of the species. The exemption for minister's instruments in section 18 must require that the activities approved be consistent with the recovery for the species and that there be an overall benefit to the species, as verified by an independent expert. Otherwise, the status quo can continue and hamper the implementation of recovery planning as intended in the act.

The last area I'd like to talk about is the phasing-in provisions. Currently, the phasing-in provisions in the bill would mean that habitat protection for the "backlog" species will become mandatory in 2013. This time lag is a concern for woodland caribou. It will allow logging to continue in caribou habitat before we have made some really critical decisions about what areas need to be protected for caribou. Caribou need large areas of habitat without human disturbance—in the scale of 9,000 km<sup>2</sup>. I've included a map in the handout to committee members. It shows anthropogenic disturbance in Ontario's boreal forests between 1989 and 2001 in yellow, and there's a separate area in red which shows anthropogenic changes between 2001 and 2006. This does not include natural disturbances like fire and insect outbreaks. The scale of our impact on the boreal forest on this map shows why an animal like caribou, which needs large intact forests, could be in trouble—is in trouble. Caribou have not occupied areas previously logged, even once the forest grows back. The area they live in has steadily receded northward as industrial activities like logging and road construction have moved north at a rate of approximately 34 kilometres per decade.

While the provisions of this act are coming into force, intact caribou habitat will continue to be logged. I would urge the government to consider fast-tracking the implementation of the act for woodland caribou and to take immediate steps to defer key areas of intact habitat from logging and road construction while recovery planning is taking place. I'd encourage the government to pass a strengthened Endangered Species Act with the revisions suggested.

Thank you.

**The Chair:** Thank you very much. You've left just over a minute for each party, starting with Mr. Ouellette.

**Mr. Ouellette:** Thanks very much. You spoke about recovery strategies. How do you think they should relate, for example, to global warming? When you deal with polar bears, the province of Ontario has a substantial population, in the area of 1,000 polar bears. Global warming substantially impacts them. We would have virtually no ability to deal with that unless there's a change of feed that they're dealing with.

**Ms. McEachern:** If your question is how measures to—

**Mr. Ouellette:** You mentioned that—so the polar bear is listed.

**Ms. McEachern:** Yes.

**Mr. Ouellette:** Automatically bring in a recovery strategy. How do you deal with polar bears when it is completely out of your hands?

**Ms. McEachern:** Polar bears are not my realm of expertise; I'll say that. I think that the issue with global warming, at least within the boreal forest, and caribou—luckily, intact areas of caribou habitat store a lot of carbon as well. So from a global warming perspective—

**Mr. Ouellette:** The areas you mentioned for caribou particularly are under moose management currently. The moose management forest practices discourage caribou habitat, as you well know, if you deal with caribou. Do you think that we should be implementing caribou strategies, then, so that we change those strategies to—it's not when the forests originally grow back; it's when they hit about 900 stems per hectare, as opposed to the 2,500 on average that they're at now, where caribou would be able to migrate back into those areas, which means we're looking at another 50 years before you see any movement back.

**Ms. McEachern:** We haven't seen any movement back even from very early logged areas, but related to—sorry. What was your actual question?

**Mr. Ouellette:** It was dealing with the—you're looking at the strategy plan for implementation.

**Ms. McEachern:** Oh, the moose. Sorry.

**Mr. Ouellette:** Right. Moose as compared to caribou.

**Ms. McEachern:** Most of the area that caribou live in, the moose guidelines have been slowly phased out. We've recognized that fragmenting the landscape at that level was not appropriate for the species and for the ecological sustainability of the forest. I think the areas of caribou habitat that remain intact do need to be set aside or managed specially because, within the managed forest, there aren't many of them left.

**The Chair:** Thank you. Mr. Bisson?

**Mr. Bisson:** So those polar bears live in my riding.

Just a couple of things. To get to the nub of this, is there any way, in your view, that the principles of the Endangered Species Act can coexist with the economic activities of the forestry, mining and other industries?

**Ms. McEachern:** I believe they can. I think the way the markets are shifting is going to mean that they're actually complementary.

**Mr. Bisson:** One of the things that was alluded to earlier in one of the presentations—and I'm trying to put some thought to it—is that under the Lands for Life process, there was a trade-off. As we set aside lands to protect for future generations, under principles as set out under Lands for Life, there was an offset, so that if you lost, let's say, X amount of harvesting or X amount of whatever, there was an offset somewhere else. Is that possible, in your view, in this particular context?

**Ms. McEachern:** If by "offset," you mean a mitigation wood supply—

**Mr. Bisson:** Yes, exactly.

**Ms. McEachern:** —which is what happened in Lands for Life, I think that where that is possible without jeopardizing the overall sustainability of the forest, it makes sense for governments to try to find those types of solutions. The danger would be if that were mandated and it were to result in, let's say, accelerated harvest



beyond what the forest can sustain, that would cause overall sustainability issues.

**Mr. Bisson:** But that would be dealt with under the Sustainable Forestry Development Act, because you couldn't do that under the forest management plans. But that brings me to my next question: How does that juxtapose to the forest management plans? Because in your forest management plans, you've got to deal with harvesting limits and ratios and stuff. Can we, again, have a situation where we can basically mitigate the losses?

**Ms. McEachern:** Mitigate the losses in wood supply, you're saying? I would imagine that question would need to be answered on a unit or region-by-region basis, but we have seen no closures over the last several years. The wood demand is changing.

**Mr. Bisson:** Just by way of a comment, and this is just for the record and for yourself, is that the fear in northern Ontario—nobody's opposed to the principle. The problem is that we're a resource-based economy; that's what we do in northern Ontario. So when we talk about setting lands aside, for mining or forestry or whatever, it would be like saying, "You can't build a car plant. You can't build x, y, or z" that we take for granted in southern Ontario. That's why there's this resentment—not resentment, but a want to try to find some way to mitigate, because it's our economic livelihood.

**The Chair:** Thank you, Mr. Bisson. Mr. Orazietti?

**Mr. Orazietti:** I don't have any questions. I just want to thank Ms. McEachern for coming in this morning. Thank you for your presentation.

**Ms. McEachern:** Thank you.

**The Chair:** Thank you very much for attending this morning.

That is our final presenter of the morning. We're going to recess—

**Mr. Bisson:** Are we coming back to this room?

**The Chair:** This room at 4 o'clock. I just remind everybody, all parties and all members, that amendments need to be in by 12 p.m. tomorrow. Under the rules set by the House, there will be no exceptions to that.

We're recessed. Thank you very much.

*The committee recessed from 1149 to 1600.*

#### DOMTAR INC.

**The Chair:** Ladies and gentlemen, if we could take our seats, we're going to have to stay pretty close to the clock today in order to make sure that we hear from everybody. Our first presenter today is from Domtar. Would you like to come forward? It's 4 o'clock, so I'll call the meeting to order. If you would like to introduce yourself for Hansard, you've got 10 minutes. If you could leave a little bit of time at the end for questions, that would be great; if not, the time is yours to use as you see fit.

**Ms. Bonny Skene:** Thank you, Mr. Chair and members of the committee, for the opportunity to speak to this proposed legislation. My name is Bonny Skene. I'm the

public affairs manager with Domtar. I'm pleased to be here and joined by my colleague Dr. Kandyd Szuba, a biologist, also with Domtar.

First of all, we've circulated a handout that we'll use for the purposes of discussion. Domtar is now the largest integrated producer of uncoated freesheet paper in North America. Uncoated freesheet paper is a technical name for photocopy paper—this paper. We employ 14,000 people worldwide, including approximately 2,900 of those in Ontario. We're responsible for the management of five sustainable forest licences in Ontario, and we are partners in another five, which really leads to our involvement in the management of approximately just over seven million hectares of crown land in Ontario.

At this point, I'd like to turn it over to Dr. Szuba to speak to some of the technical aspects of the proposed legislation and some of the recommendations that we bring forward today.

**Dr. Kandyd Szuba:** Honourable members, ladies and gentlemen, we have travelled a long way to be here today because Domtar supports and—

**Mr. Bisson:** Excuse me, you'll have to sit—

**The Chair:** Yes, unfortunately we can't pick you up on the mikes if you stand up.

**Dr. Szuba:** Okay, thank you. I'll start again.

**The Chair:** That was a good start, though.

**Mr. Bisson:** I just saw the interpreter jumping up and down. J'ai compris, Madame, dans les deux langues.

**Dr. Szuba:** I'll start again. Ladies and gentlemen, we have travelled, as I said, a long way to be here today because Domtar supports an effective and efficient Endangered Species Act. Ontario, we note, has been a leader in providing for species at risk since passing the original Endangered Species Act back in 1971, 30 years before the federal act. Since then, MNR and the forest industry have taken our responsibility to protect and to provide for species at risk very seriously. Providing for species at risk has been intimately linked with Ontario's open, comprehensive forest management planning process. We support strong environmental legislation, including a renewed, updated Endangered Species Act for Ontario.

On the next slide, honourable members, you will see a map. What we are saying here is that the forest management process—the system that we use, the system that governs all the activities of the forest products industry on crown land—applies to all forest management units in Ontario. On this map, those units are illustrated as the differently coloured polygons. The units that are of particular interest to Domtar are in the medium-blue shades there in the northeast and the northwest. We are showing you this map to remind you that the decisions that you make regarding the Endangered Species Act—the degree to which the act will recognize or compromise the forest management planning process—will affect a very large area, the entire area illustrated on this map.

Providing for species at risk is our business, and it has been an important part of the forest management business for a very long time. The forest management system is a



made-in-Ontario system. It includes inventory and reporting of important sites and habitat supply modelling over time. It includes areas-of-concern planning in forest management plans using science-based reserves that are identified in forest management guides that are approved by MNR and applied to special sites, to shorelines and other areas.

If you look on this slide at the map that we've depicted here, this is typically what you might see in a forest management plan. What we show in green are the forest stands; in blue, is water; and under the "N" might be the nest of a species at risk such as the bald eagle. The concentric circles around that nest would be the buffers, the reserves. That represents the area of concern we would apply around every known occurrence of this species at risk in the forest.

This forest management process also includes a complex series of manuals, guidelines and activities that ensure that through our harvesting of trees on the landscape we emulate natural disturbances to the extent possible. The idea is that this will provide a diversity of forest types and ages across the landscape in approximately natural amounts. The thinking is that by doing this, we will provide habitat currently and in the future for species that might be on Ontario's list today, and we will keep the common species common, and therefore prevent species from finding their way onto the endangered species list in the first place.

On the next slide we make the point that we believe the forest management system that is in place today works, that it contributes to species recovery. Here you see seven species that have either been taken off the list, where they resided at one time, because their population has recovered, or when the new legislation is passed, they will be downlisted or delisted—taken off the list—or in the cases of the bald eagle and peregrine falcon, they have been downlisted because of population recovery. We believe that this is evidence that forest management has contributed materially to species recovery.

Honourable members, you must change the text of the new Endangered Species Act to recognize, not jeopardize, this effective forest management system. We are asking you to explicitly recognize as instruments under the act approved forest management plans, approved forest management guides, and also to use a more meaningful definition of "critical habitat" in the act—nests, dens, residences—so that this will ensure that truly valuable habitat is protected and at the same time minimize unnecessary adverse impacts on economic activity that is so vital to our communities. Domtar supports the OFIA's proposed changes to the wording of the legislation that will address these two points.

**Ms. Skene:** In summary, we support an effective and efficient Endangered Species Act. The forest industry and Domtar have a long record of participation, co-operation and support for species-at-risk initiatives. The system in place to provide for them and protect them works. The act must explicitly recognize the existing forest management plans, guides and processes to reduce

uncertainty, prevent unintended prohibitions and challenges to forest management plans, and reduce the cost of implementing Bill 184.

I thank you for the opportunity to address this committee. We look forward to the meaningful and important changes required to ensure that this legislation is both effective and efficient.

**The Chair:** Thank you. You've left time for one brief question from the opposition.

**Mr. Miller:** Thank you very much for your presentation today. Just last week I actually had a meeting in my constituency office in Bracebridge with a constituent who is a biologist working in the forestry industry. He wanted to see me to say that he supported the act but that most of the work is already being done through the forest management plans and guides, exactly as you say. In fact, he brought them with him into my constituency office. He made the point you have so clearly today, that all the good work you are doing be recognized. So I take your point, and we'll certainly support your main point of recognizing the forest management plans and guides and make sure that works with this new act.

**The Chair:** Thank you very much for attending today.

1610

#### NORTHWESTERN ONTARIO MUNICIPAL ASSOCIATION

**The Chair:** Our next presenter is from the Northwestern Ontario Municipal Association, Mayor Krassilowsky from Dryden. Good afternoon. You have 10 minutes to use any way you like. If you could leave some time at the end for questions, that would be appreciated.

**Ms. Anne Krassilowsky:** Ten minutes is a very short time, but I'll try.

Good afternoon, members of the committee. My name is Anne Krassilowsky, mayor of the city of Dryden. I'm here today in my new capacity as president of the Northwestern Ontario Municipal Association.

As you know, NOMA is unique across Canada as the only municipal organization that continues to be able to say it represents 100% of the municipalities within its jurisdiction. The NOMA annual general meeting was just held in Dryden on April 25 to 28. The key message I carry from the delegates to this committee is a very real and serious concern over the potential impact of yet another piece of legislation on our economy.

NOMA members and the vast majority of the people we represent support bringing the Ontario species-at-risk legislation up to date. As you know and can appreciate, northwestern Ontario is a series of communities in turmoil, and has, as one presentation at the AGM indicated, lost over 6,000 jobs in the past few years, some temporarily and some forever. Each family in each and every community lives on a daily basis in uncertainty and in fear of tomorrow, and now faces the potential impact of the species-at-risk act. It is no wonder that 75 municipi-



palities from across Ontario have sent letters to the Premier asking for full public hearings on this legislation.

With all due respect, two days of hearings in Toronto, approximately 1,278 miles away, a trip that would take you 24 hours to get from my neighbouring community of Kenora to the outskirts of Toronto, is unacceptable. In context, that is the same distance between Toronto and Sydney, Nova Scotia, on Cape Breton Island, or Toronto to just short of Tampa, Florida. The people left working in the forest, facing a shortage of time and money, are not in a position to travel those same miles to make their concerns heard here today, and yet they do need to have their say.

Much has been said about all the consultation that has been held over the past year. Northwestern Ontario and her people recognize that the Environmental Bill of Rights was posted on the same day that most municipalities closed their offices for the Christmas break. That certainly restricted our ability to know about it, research the issue and respond accordingly within a relatively short period.

NOMA has a long-standing reputation of being focused, credible and, as you know, persistent. We believe in our area and we constantly press the views and concerns of the people of the northwest. At the same time, we have worked with all governments to find solutions that work with and for the north.

We were therefore pleased when Minister Ramsay told NOMA delegates that he had heard the concerns being raised over this legislation and was preparing to introduce amendments at the committee stage. We are frustrated that as of this past Friday no amendments have been tabled. Upon receipt of the government's amendments, we would ask that the committee circulate them to all those who have appeared before this committee and provide us with an appropriate period of time to formally respond. Further, we would ask that the committee not move to consideration of the amendments until that has occurred.

Today, we want to put forward our suggestions for changes to the act to deal with some specific concerns that have been identified by the industries that represent key components in our northwestern Ontario economy. We rely on their advice, as they are the experts in the forest. They manage the resources on an ongoing basis and we believe they have done and are doing an excellent job as stewards of the boreal forest.

As you know, and we know, this is not the same industry that was operating in northwestern Ontario when I came to Canada in 1944. Today's industry has undergone significant change in recent decades and is among the most progressive to be found anywhere. Since 1994, we have seen the development of class approval for forestry on crown lands under the Environmental Assessment Act and the approval of the Crown Forest Sustainability Act. These two pieces of legislation, as you know, are among 17 federal and provincial acts that ensure that forest management on crown lands is conducted in a sustainable manner and for all values, including the

protection of species at risk. Mining and other activities on the land are also heavily regulated, and this regulation provides for the protection of species at risk.

Bill 184 lacks necessary clarity and presents many unanswered questions, particularly with respect to the impacts this legislation will have on our northern communities.

NOMA, a member of the Ontario Forestry Coalition, which you heard from earlier today, is pleased with the responses we've had from the government of Ontario over the past two years, as it has responded to some of the recommendations of the Minister's Council on Forest Sector Competitiveness. Premier McGuinty told us that "more needs to be done," and we will certainly continue to pursue those additional changes to public policy. At the same time, we are concerned that the existing hard-fought gains are in jeopardy if new policy isn't efficient, if it creates more cost and makes us less competitive in an increasingly tough global marketplace. We believe that Bill 184 can be modified to ease our nervousness and ensure more stability in the boreal forest. These amendments will not diminish the act but will strengthen it.

NOMA supports the creation of COSSARO, an expert group made up of scientists and aboriginals. However, we believe strongly that other practitioner and community knowledge must also be represented on COSSARO. It is all of the people who earn their living from the land and who depend on our lakes and rivers who will have the first-hand knowledge of species numbers and their whereabouts, and it is their anxieties and concerns that Bill 184 needs to address to ensure more stability in their lives and in our communities. Finally, it is important that both northern and southern Ontario are represented on COSSARO. The forests and critters of northern Ontario are significantly different than their southern Ontario counterparts, and that should be reflected in the knowledge base at the table.

NOMA also believes strongly that COSSARO should not be the last word. Committees who operate without consideration of the economic and human ramifications of their decisions need to have the oversight of a minister who is accountable to the greater public. COSSARO should be an advisory committee to the minister, with the buck stopping with the minister.

Interim habitat—a too broad definition and open to interpretation: "An area on which the species depends, directly or indirectly, to carry on its life processes, including areas used for reproduction, rearing, hibernation, migration or feeding." The definitions provided under Bill 184 could apply to almost anything and have the potential to unnecessarily impede economic activity with no tangible benefits to species at risk. The act needs to be amended to provide for a more site-specific definition that provides for distinct areas of specialized function that are directly relevant for species survival. We support the proposal put forth in the Ontario Forestry Coalition presentation earlier today.

Finally, Bill 184 needs to provide a measure of compensation for landowners, resource users and commun-



ities impacted by the legislation. This change would make Bill 184 consistent with the federal species-at-risk legislation, which recognizes that protecting species is to the benefit of all citizens and comes at a cost that must be shared by all parties. We urge the government to ensure that investments made by those operating on the land will not be lost or diminished by the provisions of Bill 184.

We need to understand that in an industry which you have seen to be under threat and where investors are not beating down the door to invest in our forest industry, the potential of new red tape where there is uncertainty will only drive those investors even farther away. We ask you to also understand that the NOMA area is more than forestry and mining; it is farming, commercial fishing, angling, hunting and trapping, waterpower development and quarry operations, all with the potential to be impacted by this legislation.

Our neighbours, the Anishinabek people, who we share this land with, also have concerns about this act, as we heard from Grand Chief Stan Beardy this morning. We support those concerns.

Members of this committee, we are not speaking as alarmists and we are not fearmongering. As a mayor of a community in which livelihoods are at stake, where the value of people's homes, our history and the future of our communities face the consequences of government policy, it is not alarmist to express those concerns. We've certainly been alarmed over what has already happened to our communities. We do fear the unknown because we have so little control over it.

There is a map attached with circles that indicate most of our communities. The vast majority of that turmoil in our communities is related to the forest industry. I have spoken directly with Domtar, which is a major employer in my community and the surrounding area, to better understand how this legislation will impact them and the forest industry as a whole.

1620

I am the owner of a logging truck that depends on the forest for stability. I can fully understand those whose livelihoods depend directly on this industry and I understand the uncertainty of those who operate in the indirect jobs related to this industry across northwestern Ontario.

We in northwestern Ontario understand and know first hand who's in our bush, what lives there and where they travel. While we understand the need to protect endangered species, we need to ensure that we protect the people who live and work in the boreal forest. We've lost jobs and thousands of people, so let's change this act so more people are not forced to leave.

If our requested and moderate amendments are accepted into the act, we can and will support Bill 184, but we also need to be pragmatic, efficient and realistic about how we take on that important task. All we ask is that you fine-tune this act so that it works for our northwestern people and the Ontario species at risk.

**The Chair:** Thank you, Mayor Krassilowsky. Fortunately, or unfortunately, you were 10 minutes right on,

so you didn't leave any time for questions. But it was excellent time management, so thank you very much.

**Ms. Krassilowsky:** It's many miles for such an important subject in 10 minutes.

**The Chair:** Thank you very much for coming today. It is appreciated.

#### DAVID SUZUKI FOUNDATION

**The Chair:** Our next presenter is from the David Suzuki Foundation, Rachel Plotkin. We'll be hearing from Rachel for 10 minutes, and then I'd suggest at that time we go down and vote, so we're not breaking somebody's presentation in half. You have 10 minutes, Rachel. The time is yours to use as you see fit. If you do have the opportunity to leave some time for questions, I know that would be appreciated.

**Ms. Rachel Plotkin:** Thank you very much. The David Suzuki Foundation greatly appreciates the opportunity to appear before this committee. The David Suzuki Foundation is proud to be one of the members of the Save Ontario's Species coalition. I've come today to present from Ottawa, where there are a total of four David Suzuki members working in a satellite office.

The mission of the David Suzuki Foundation is the protection of biodiversity through science and education, and the David Suzuki Foundation has over 40,000 supporters across Canada, and actually the majority of these are from Ontario.

I myself have been working on the species-at-risk file for six years, mostly at the federal level, watchdogging the implementation of SARA and focusing on habitat and habitat identification, but also reviewing provincial policies through things like report cards.

Across Canada, habitat loss and degradation is the number one cause of species decline. There was recently a science article published that said it was the primary cause of decline for 84% of Canada's species at risk, and the number was even higher when looking at terrestrial species. This is particularly true in Ontario, which has been heavily impacted in the south. Habitat has been lost due to the conversion of natural areas to subdivisions, to cities, to towns. Habitat has been fragmented by roads and habitat has been lost due to the impacts of industrial resource extraction such as logging and oil and gas and mining.

It therefore follows that if species are to be protected, the number one thing that we need to do is ensure that their habitat is protected. When I say "protected," I don't mean putting all the habitat into protected areas. Protected areas might be necessary in some instances, but I think that for most of us, we understand that it means the appropriate management of the habitat that species need to survive and recover, and in some instances, restoration.

Over all, there are several components that the David Suzuki Foundation feels are essential to have strong endangered species legislation. One of these is a science-based listing process. I think committee members have



heard a lot about that. It's our feeling that it needs to be based on science, if the species is at risk or not, so that species that are at risk can be afforded the tools they need for recovery through endangered species legislation. Another component is a strong recovery planning process that outlines what it is that a species needs to survive and recover, and finally, effective prohibitions against destroying species' habitats and species' homes.

Bill 184, as it is presently written, has many of these components and we commend the government on that. It has the science-based listing process, mandatory habitat protection and mandatory recovery planning. It also has a prohibition against measures to destroy presently occupied and recovery habitat. However, there are several places in the bill that we think need improvement pertaining to the recovery strategy process and the links between the recovery strategy and other components of the bill. I'm going to go through some of those gaps right now.

The most pressing gap that the David Suzuki Foundation sees is the fact that the recovery strategy, as it is written, has no components. There is nothing that is mandated for recovery teams, under the act as it is written, to do in the recovery strategies besides just present a recovery strategy. Recovery teams are the best situated folks to identify habitat because they're working with science, and they're already up and running in Ontario. The majority of species at risk in Ontario already have operating recovery teams under the federal Species at Risk Act.

You have before you, committee members, a list of proposed components of a recovery strategy. I won't read through them one by one, but I will highlight some of them.

One important one is for the recovery strategy to identify the main threats that are facing the species and to identify mitigation measures for addressing these threats. Perhaps most importantly is the identification of the habitat that a species needs to survive and recover, based on the best available science and including information provided by COSSARO and by the Committee on the Status of Endangered Wildlife in Canada, or COSEWIC, and a timeline, a recommended schedule for implementation of the strategy, including a prioritized list of recommended actions.

Regarding the identification of habitat, there are a number of ways that habitat can be identified. This is one area where the wording sometimes matters. What we are pushing for, in the Save Ontario's Species coalition, is that habitat is identified, as opposed to defined, and that this habitat includes mapping where it's feasible to do so. There are some species that don't lend themselves to this type of description, but for those that do, we require mapping. This is again because species aren't going to recover unless their habitat is protected, and we're not going to be able to protect the habitat of species at risk unless we know where that habitat is.

Recovery strategies should also be tied to the precautionary principle, which is the principle that the lack

of scientific certainty does not preclude action. That is, they shouldn't stall interminably, saying, "We haven't quite yet done this study. There's one more study that we need to do." They should use the best science that they have at their fingertips to, where possible, identify the habitat that species need to recover and take into account the fact that, as new science comes in, there will be amendments possible to the habitat regulations.

Another thing that's worth emphasizing is that the components of the recovery strategy need to be mandatory. There are numerous times in numerous bills where the wording is strong until it comes to either "may" or "must." This is something that is integral to species recovery: Habitat must be identified.

There is another section in the bill, the habitat regulation section, which allows for the definition of habitat, but this section is discretionary; it says the minister "may." That just makes me emphasize once again that under the recovery strategies, it should be mandated that the appropriate habitat that species need to survive and recover be identified. Ultimately, the identification of habitat and the recovery strategy stage can serve to inform the habitat regulations, which I will come to in a moment.

Another gap that we see in the bill is the way that it's worded how the government should respond to the bill. Right now, the draft text of the bill says that the minister only has to respond to the bill, as opposed to implement the bill. We recommend that the minister should be required to implement the portions of the recovery strategy that are within the authority of the government of Ontario, unless the minister can demonstrate that such implementation is not feasible.

To come back to habitat regulations, as you know, under the act the minister can designate habitat. This is done with stakeholders, which we think is a strong component of the bill, to replace the interim habitat designated upon listing. Although habitat regulation would best be informed by recovery strategies, this link is not made apparent in the bill. The bill should clearly state that the development of species-specific regulations will be based on recovery strategies. The bill can be amended by requiring species-specific regulations to be based on the best available information about the habitat needs of a species, including information contained in recovery strategies and, again, contained by COSSARO or the COSEWIC body.

The habitat regulations section also has a clause that has the potential to undermine the link between recovery strategies and habitat definition under the regulations. As it is currently written, section 54(2) enables the minister to designate habitat that might be smaller than the area used by a species to carry on its life process. This obviously could result in the designation of insufficient habitat for species recovery. This gap can be amended by adding language to ensure that, at a minimum, sufficient habitat is prescribed to provide for the survival and recovery of the subject species.

Another area that should be linked to recovery strategies but is not yet in the bill is the permit and agree-



ment section. Under the major exemptions and agreement sections as written, it's possible that all of the work done by recovery teams and by stakeholders in the habitat regulations committees could be undermined.

As they are currently written, clause 54(1)(b) provides a wide exemption power, with nothing limiting the use of the section so as to ensure that species are not put in jeopardy, and section 18 could allow for exemptions from the prohibitions for existing instruments, which could include forest management plans. Once again, this has the potential to undermine all of the work done by recovery teams and the committee and stakeholders involved in the habitat regulations that go toward defining the habitat and species needed to recover and putting measures in place to ensure that this habitat is maintained.

Once again I'll say, just to emphasize it, unless you protect the habitat that species need to recover and unless you start protecting it by identifying it, there's no question that species at risk in Ontario will not recover.

As you've likely heard from my fellow SOS coalition members, one way to address the threat posed by these two gaps is to ensure that there is a clause that ensures that the effect of exemptions does not jeopardize the survival or recovery of a species. Another way is to add an amendment to the bill to insert something that links the permits and the exemptions and instruments to the recovery strategies and ensures that they are consistent with the minister's response to the recovery strategies.

I'll just add one thing that isn't in my presentation that would also strengthen the act, which is that, as the act is currently written, clause 11(4)(c) gives the minister the potential to delay the development of a recovery strategy. We recommend that there should be a ceiling on that, that the delay should not exceed a year.

It's worth noting that as the recovery strategy is currently written under the act—that is, it just says “recovery strategy” and it doesn't have components—it doesn't measure up to the federal Species at Risk Act. As committee members might or might not know, the way the federal Species at Risk Act was created gives it a safety net so that one can sue under the Species at Risk Act if a province doesn't have laws that are comparable. So really, the Ontario—my time's not up, is it?

**The Chair:** Yes.

**Ms. Plotkin:** You're kidding. Okay. My last thing is, thank you. We really appreciate all of the effort that the government has made on this bill, and we hope the government takes heed of our amendments.

**The Chair:** Thank you, Ms. Plotkin.

**Ms. Plotkin:** It goes by so quickly.

**The Chair:** It does. Time flies when you're having fun.

We need to go and vote. For those members of the audience, that means that all the members will be excusing themselves. There will be a vote held in the chamber upstairs in just under five minutes. All the members will be returning to this room after that. The next one is

Buchanan Forest Products after we come back. We're recessed.

*The committee recessed from 1633 to 1642.*

## BUCHANAN FOREST PRODUCTS

**The Chair:** We're back in session. Hartley Multamaki, vice-president of planning and development for Buchanan Forest Products: Ten minutes is all yours, sir.

**Mr. Hartley Multamaki:** Thank you very much. Let me say that it's a real pleasure to be here. We appreciate the opportunity to make a submission to this committee.

I'll start out by saying that 93% of the species at risk occur in southern Ontario, and I'll revisit this theme a little bit further on. I think that very clearly points out that the forest management planning process in Ontario is working, and it's working well. Of the other 7% of the species that are at risk, there are very few of them in northern Ontario, and we are concerned about all of those. Some, of course, have a much larger impact on our operations than others.

As you point out, I'm Hartley Multamaki, vice-president of planning and development for the Buchanan group of companies. We are a fully integrated forest products company. We manage large chunks of north-western Ontario under sustainable forest licences. We have solid wood products mills, sawmills, and we own one major pulp mill in Terrace Bay.

The species that we are most concerned with at this point in time is the woodland caribou because of the nature of the animal and how it crosses over large amounts of northwestern Ontario. I'd like to point out that the caribou, we suspect, is on that endangered species list as a direct result of past management practices that were approved under the featured species approach to management in the province of Ontario. Caribou have basically receded to the north as a result of a number of activities, mostly human-based and mostly, I think, as a result of management practices that were approved and put in place over the last 40-plus years.

One of the interesting things about it is that caribou occupy habitat that is very, very specific and doesn't tend to be very diverse in nature. One of the points I'd like to bring up is that with recovery programs or recovery plans, it does not appear like there are going to be any assessments of the impact of those recovery programs on other species. If you look at a species like caribou, very clearly, if you have a recovery plan that's geared to bringing caribou back, you will impact on a wide range of other species that are out there on the land base. Obviously the one that comes to mind is wolves. Wolves and caribou do not coexist in a very comfortable arrangement. It's a prey-predator relationship, and caribou tend to be fairly easy prey for wolves. And at some point in time, wolves may in fact end up being added to the list. So one concern for us is that we don't have recovery plans that end up adding species to the list as opposed to simply taking them off.



The other thing I would point out is that the Ontario forest management planning program is one of the few—if not the only—processes that has gone through a complete class environmental assessment. I know of no others in the world. We spent more than a decade on that particular class environmental assessment, and we take a great deal of pride and comfort in the fact that we operate in a fashion that is approved under that class EA. I would also point out that most of the people who are making presentations here—their groups were represented at that class EA. In fact, it was a joint effort by the province of Ontario and most of the groups that are out there, either on the land base or stakeholders in activities that occur on the land base, that led to that class environmental assessment being approved.

The other thing is, we operate through a series of guides. An example of this would be the landscape guides that take into account very specifically those species that are at risk.

If you look at the third or fourth page, we're quite concerned that there would be impacts on other biological communities, either plant life or wildlife, as a result of some of these recovery strategies. If you put a single plan in place, obviously it's going to have an impact on everything else around it. We certainly do not want to have other species added to the list as a result of a recovery plan.

The other issue for us, obviously, is wood supply and wood supply costs. We are suggesting that there should be a socio-economic impact analysis done with respect to each of the recovery plans that are put in place. It's critical, particularly with caribou, that a recovery plan include a socio-economic impact analysis to determine what impacts the communities and the people of northern Ontario are going to feel as a result of these recovery plans.

I've included a map in my package which shows the area to the east of Lake Nipigon. Those are some of the areas that we're primarily concerned with. That's not to say that the caribou recovery strategy doesn't apply to the western part of the province, but we do have the bulk of our operations as a corporation in that area.

The other thing I'd point out is that we do operate in a world where wood supply has been continuously falling, and the caribou guidelines have, in fact, reduced the available wood supply significantly. In 1990, we basically had 14 million cubic metres of conifer available in the northwest region; it has now fallen to 9.5 million cubic metres. We've lost over 3 million cubic metres of wood supply as a result of the previous caribou guidelines. So obviously, we're very nervous about the impacts of a caribou recovery strategy in northwestern Ontario.

I would also point out that we would suggest there should be a discussion around compensation to the communities, the companies and the people of northern and northwestern Ontario, should the impacts be significant.

In conclusion, SARA needs to recognize the existing forest management planning process and the world-class nature of that process. Like I said, our forest management

planning process in Ontario is one of the finest in the world. I would suggest that we don't necessarily need to reinvent the wheel; we simply need to maybe tweak it or improve on what's already there. We also need to recognize the complex nature of the ecosystems that are being managed. When you manage an ecosystem for one species or one purpose, it's commonly at the expense of all of the other species or purposes that are out there. We are also suggesting that any recovery strategy should have a socio-economic impact analysis done on it, and we're suggesting that there should be mitigation in the recovery strategies.

Thank you very much. I'll take questions.

**The Chair:** Thank you very much. You've left almost three minutes, starting with Mr. Bisson—very short.

**Mr. Bisson:** You've touched on it, and that is the issue of how does this juxtapose with your forest management planning manuals? The short question is, is that an amendment that you would want to have to make sure that those two pieces of legislation are somewhat linked? The second thing is—a little bit unrelated, but kind of related—do you have any sense, in regards to the licences you currently have, as to what degree this legislation would impact current holdings that Domtar has?

1650

**Mr. Multamaki:** I'm actually with Buchanan Forest Products, but—

**Mr. Bisson:** Oh, sorry; Buchanan. I'm a northeastern Ontario guy, you know? Tembec?

**Mr. Multamaki:** Yes, we have looked at potential impacts. We've played the "what if" game: "What if the legislation looks like this? What if the recovery strategy for caribou is of this nature?" There's no question that when you make a decision like that for managing a single species, there are always impacts. The question is, to what extent are those impacts going to occur and where are they going to occur on the land base? It's appropriate for us to understand what the final numbers look like, what those impacts really do look like—

**Mr. Bisson:** Do you have any sense?

**The Chair:** Time to move on. Mr. Orazietti?

**Mr. Orazietti:** Thanks for your presentation and your information. I just want to ask you how you feel about the current act that's in place and the flexibility or lack of flexibility in comparison to moving forward with this act. My understanding is that we're going to have more flexibility now to deal with these issues as opposed to the current act, if you can appreciate us balancing the socio-economic needs with those in the environmental community who suggest that we're simply not doing enough, we have more endangered species today and we have issues that are not being addressed.

We've heard from many forestry individuals as well as mayors of various communities in northern Ontario about the importance of ensuring that we protect the economic vitality of northern Ontario. Being from Sault Ste. Marie, I certainly know that that's paramount in my community as well. Can you comment on that flexibility? Because my understanding is that we are going to have more flexibility now than under the current act.



**The Chair:** Very, very briefly, if you would. Then we'll go on to the opposition party.

**Mr. Multamaki:** Sure. I think the act is quite old. It does need to be updated. I think we have to be very careful, though, about some of the definitions that are in there. My colleagues have spoken about that with respect to identifying specific den sites and that type of thing.

The other important thing to understand is that when you look at Ontario, the bulk of the problem, 93%, is in southern Ontario. In fact, if you look at crown land where forest management planning is applied under the Crown Forest Sustainability Act, there are species that are being delisted as a result of forest management planning activities. Very clearly—and Mr. Bisson said this earlier—there needs to be a connection between these two acts, the Crown Forest Sustainability Act and the species-at-risk act, to ensure that we continue to have the opportunity to perform at the level we're already at. We're already delisting species. Look at the bald eagle, for example, in northwestern Ontario. We have an excellent system out there. Let's not break it.

**The Chair:** Thank you, sir. Mr. Yakabuski?

**Mr. John Yakabuski (Renfrew–Nipissing–Pembroke):** Thank you very much for joining us today. Some of your industry colleagues have put forth what they consider to be reasonable amendments to this bill. I'm presuming that you would be supportive of those with regard to the composition of COSSARO, habitat definitions and the minister having final responsibility for decisions under this act.

**Mr. Multamaki:** Yes. We have no problem with that. In fact, we do support those amendments. As I've said, my colleagues have spoken very eloquently about a number of these things.

**Mr. Yakabuski:** You have some significant concerns if they're not there. Would that be a fair assessment?

**Mr. Multamaki:** Yes, we have some significant concerns for sure, like I said. For our group, caribou is one of those concerns because the definition of habitat and so on is not as clear as it should be. On top of that, you have to understand with caribou, we've spent the last 40 years actively managing for moose, deer and all of the associated species that come along with moose and deer. That's the featured species approach. We went to the class EA and presented that as a province, that we were going to manage on a featured species approach. The result of that, of course, is that the northern part of the province is managed for caribou and the middle part of the province is managed for moose. We made that decision years ago.

**The Chair:** Thank you, sir, for attending today.

COMMUNICATIONS, ENERGY  
AND PAPERWORKERS  
UNION OF CANADA, THUNDER BAY

**The Chair:** Okay, we've got time to hear from one more group before we go and vote again. Our next presenter is the Communications, Energy and Paper-

workers Union of Canada, Thunder Bay, Marvin Pupeza, national representative. The floor is all yours. You've got 10 minutes, sir.

**Mr. Marvin Pupeza:** Thank you, Mr. Chairman. I should be well within the time frame.

My name is Marvin Pupeza, and I'm a Thunder Bay-based national representative for the Communications, Energy and Paperworkers Union of Canada, our province's and our country's largest union of workers in the forestry sector.

At the outset, I would like to make it clear that our union does not object to, or challenge, the need for legislation to protect endangered species. By policies and actions, CEP firmly believes that sustainability of our resources means job security for workers. But we also believe that public policy initiatives such as Bill 184 need buy-in from those they affect the most, and the only way to assure that support is by listening to the concerns of all stakeholders. CEP believes you need to expand your consultation process much more broadly, and I want to focus my remarks on that issue today as well as suggest an amendment to Bill 184 to protect the economic interests of the already hard-hit workers in the forestry sector.

Consultation: To say the consultation process was inadequate would be an understatement. One would expect that prior to the legislation being introduced, a comprehensive process would be implemented, allowing all stakeholders the opportunity to make their ideas known. This process should have had information gatherers travelling to all parts of the province allowing input from any interested party. Despite public statements that consultation has taken and will continue to take place, our union has neither been consulted nor allowed any opportunity to be involved in the preparation of this piece of legislation. The same goes for other northern stakeholders.

There is a present mindset that asking questions or voicing concerns about this or other pieces of legislation is tantamount to fearmongering. We believe it is both unfair and irresponsible to portray concern for potential job loss in northern Ontario and the negative impact on our communities as fearmongering. If the proper consultation had taken place, there would be no need to talk about this issue today.

A decision has been made not to travel to northern Ontario to hold these committee hearings. It was the wrong decision, and it certainly begs the question, who is trying to hide what, and why? A one-hour question-and-answer period in Thunder Bay with 50 selected invitees does not constitute proper consultation. Democracy cannot and should not be bypassed for expediency.

Amendments: I can tell you the CEP shares the same concerns which have been voiced by the Ontario Forest Industry Association, OFIA, and we believe that amendments must be generated to address those concerns. The issues of equivalency, habitat definition, compensation and COSSARO composition and ministerial authority are important to the final product.



The CEP has been in the forefront of dealing with environmental issues such as the elimination of organochlorines in mill effluent and support for the Canada safe drinking water act and was the first trade union to publicly endorse Kyoto, just to name a few. Crucial to balancing environmental and socio-economic interests is the need for a just transition program to help workers and communities prepare for change and adjust to it. Such a program must be an integral part of Bill 184, particularly where actions taken under the legislation could result in further job losses. Despite some government verbal assurances that jobs will not be lost, we do not believe changes would not occur. If that were the case, then there would be no need for any new legislation in the first place.

No worker should be asked to choose between his or her livelihood and the environment. Sustainable employment must be part of the solution, along with a sustainable economy and healthy ecosystems. Just transition is about planning for these changes and addressing negative impact in a fair and equitable way.

Recent public statements by Premier McGuinty indicate a willingness to embrace transitional programs. Most recently, the issue of automobile emissions, and the need for targets for such emissions, has been at the forefront. The CEP submits that if a transition plan is good enough for the biggest Ontario economic contributor, auto, then it should be good enough for the second-largest Ontario economic contributor, forestry. The just transition amendment must commit to all stakeholder participation and development, and be fully funded by the provincial government. The just transition program must also be in addition to any present adjustment programming.

On behalf of the CEP, I want to thank the committee for the opportunity to appear today, and we look forward to seeing some meaningful changes in the legislation.

**The Chair:** Thank you, sir. You've left just under five minutes. That's going to leave us each about a minute and a half, starting with Mr. Oraziotti.

**Mr. Oraziotti:** Thank you very much for your presentation. I have no questions.

1700

**The Chair:** The opposition side?

**Mr. Ouellette:** Thank you for your presentation. One of the largest emerging questions from the forestry sector that will directly affect you is the ownership of biomass and moving forward with utilization for energy creation. Do you feel that this legislation is going to have an impact on biomass, or the decisions that are taking place? Because I don't see any consideration of what's taking place as it relates to forestry and the northern sector at all.

**Mr. Pupeza:** Maybe not specific to the Endangered Species Act, Bill 184, but I could see the same situation with biomass as we're having with fibre presently. There are certainly differences of opinion as to whether there is enough fibre in northwestern Ontario to supply the existing mills. Yes, if more and more biomass generating stations are put in place in northwestern Ontario and

northern Ontario, that's going to create more of a demand for biomass and we're going to be in the same situation of competition between companies for biomass, and we could be running into shortage situations the same way we are with fibre now.

**Mr. Ouellette:** Thank you.

**The Chair:** Mr. Bisson.

**Mr. Yakabuski:** I think we have a little more time than that, actually.

**The Chair:** Yes. I didn't—

**Mr. Yakabuski:** Thank you very much for joining us. I just want to clarify this: So you looked for an opportunity or for time to speak to the minister on this bill previously and you were not allowed to be involved in the process of consultation? It says here, "nor allowed any opportunity to be involved in the preparation of this piece of legislation."

**Mr. Pupeza:** The CEP was not involved in any previous consultation up to the time that the minister was in Thunder Bay, the one-hour question-and-answer period I referred to in the presentation.

**Mr. Yakabuski:** Where you were not an invitee.

**Mr. Pupeza:** No, that's right.

**Mr. Yakabuski:** Thank you.

**The Chair:** Any other questions from the opposition? You've got about 30 seconds left. No?

Mr. Bisson.

**Mr. Bisson:** A couple of questions. The first one is the just transition amendments that you referred to. Where are they located? Was that in the OFIA brief?

**Mr. Pupeza:** No, the just transition amendment that we're suggesting here today is over and above the other proposed amendments that the OFIA has made. It is new; it has not been talked about yet. There have been no discussions at all around this bill as to how we are going to deal with the impact on communities and workers if there are going to be any job reductions because of the implementation of any parts of this bill.

**Mr. Bisson:** So you're asking us to come up with something that allows for transition?

**Mr. Pupeza:** That's right.

**Mr. Bisson:** Okay, just to be clear.

The other thing is that you make sort of an analogy, and I thought it was interesting, in regard to the auto industry having to change because of pressures by the public, rightfully so, to reduce carbon emissions, and that there are strategies to deal with their transition. You feel there's nothing specific for forestry. Maybe you can just expand on that a bit.

**Mr. Pupeza:** I think it was about a week and a half ago, if I remember correctly, that the Premier was on the news inviting the feds to get involved in a transitional program with the auto sector. There were no details announced or released as to what that transitional program may look like. I'm assuming that it would have to deal with how workers and communities are going to cope with any transition from where they are now to where they may be going, depending on what's going to happen with the emissions issue. There certainly is nothing in



place in terms of transition presently with job losses that we're having in the forest industry. It's more than just a forestry issue. We're losing thousands and thousands of manufacturing jobs across this province and something has to be done, so I would personally not be averse if the government were to look at a transitional plan that would apply not only for this bill but across the province of Ontario. I certainly would not object to that.

**Mr. Bisson:** The other thing is, there's a sentiment within your membership and with other members who work in the forest industry that it's been like the perfect storm: high electricity prices, what's going on internationally, the United States softwood lumber deal—all of that cumulative to create probably the worst times we've seen in the forest industry.

I was at an event this weekend with some CP workers at Local 37X. One of the comments they made, and I'm just wondering if it's predominant across your union, is that they're feeling as if they are somehow a species at risk, being in the forest industry. Do you echo that?

**Mr. Pupeza:** There is word going around northwestern Ontario in particular—because that's where I am, but I'm sure it's all across northern Ontario—that the species at risk right now are workers within the industry. It's sad to say. Where it's going to stop, I don't know, but something has to be done and it has to be done now.

We've been very active in lobbying for changes in fibre costs; we've been active in lobbying for changes in the energy policies. The next issue that came before us was Bill 184, and we have some serious concerns about what impact it may have on workers. We've lost enough jobs up in northern Ontario and it's time to stop it. We are respectfully submitting that if there are going to be losses, despite the government saying up to this point that there won't be—and there are assurances—we need that comfort level. The comfort level will be a transitional program in law to allow something to trigger in the event that there are job losses. I guess if there are no job losses, then that won't trigger and there is no harm done.

**The Chair:** Thank you very much for coming today, sir.

The members are going to excuse themselves for a vote that will be held in the chamber in five minutes. After that, we'll be back and the next people we'll be hearing from are Bowater Canadian Forest Products Inc.

*The committee recessed from 1706 to 1716.*

#### BOWATER CANADIAN FOREST PRODUCTS INC.

**The Chair:** We're called to order again. Mr. Groves from Bowater is before us. The floor is yours. You have 10 minutes. Use it any way you see fit.

**Mr. Richard Groves:** Thank you for the opportunity to speak with you this afternoon. My name is Richard Groves and I'm the manager of forestry services for Bowater Canadian Forest Products. More importantly, I am a registered professional forester who has practised

for 28 years in Ontario. I have worked both sides of the fence—the government and the industry side.

Bowater is committed to working with the government to manage this public resource sustainably. Our track record stands for itself. As just one example, in partnership with a number of forest product companies and the province, Bowater contributed 267,000 hectares of our licensed area to the expansion of Wabakimi park. This park is now 892,000 hectares in size and is a valued treasure in the northern part of this province. Wabakimi park has been expanded sixfold as a result of this expansion. This is now the largest boreal forest reserve in the world and is a world-class canoeing and recreation area, and is also the home of woodland caribou. The primary objective in the development of this park was the protection of caribou. That was in 1997.

Bowater also worked with the MNR in the development of caribou guidelines for northwestern Ontario. Implementation of these guidelines resulted in the reduction of one million cubic metres of annual conifer harvest. The guideline requires maintenance of large patches of old-forest type. To accomplish this, large areas are deferred from harvest. To put this in perspective, one million cubic metres of harvest is enough wood supply to keep the largest sawmill in Ontario operating.

I present these examples to convey in real terms that Bowater is committed to maintaining a sustainable forest for species, recreational resource users and the forest products industry. Our commitment is evident both in our forest practices and the quantity of resources we make available to manage the public resource.

Bowater is in support of updating the Endangered Species Act, as affirmed in our recent response to a letter from Minister David Ramsay. The present act is over 30 years old and is not up to date. We also point out that this is not the only piece of legislation that deals with species at risk. In fact, there are at least 17 other pieces of legislation that have incorporated the protection and management of species at risk. Much of this legislation has been developed more recently.

If the proposed Endangered Species Act does not acknowledge that these acts and their respective regulations exist, then the inevitable result will be overlapping processes and duplication of work for both government and other resource managers.

For example, in a forest management plan, which is regulated under the Crown Forest Sustainability Act, a planning team is required to develop, through a public involvement process, a series of prescriptions to maintain threatened species habitat—caribou for one. The forest management plan and the prescriptions are also required to follow the approved guidelines for that particular species.

That being the case, one would not expect an additional requirement for a recovery or management plan under the new proposed Endangered Species Act to do the same. However, the Endangered Species Act, as proposed, requires that there be a recovery strategy and/or management plan developed that deals with habitat. This



is a duplication of effort and is an inefficient and ineffective way to manage the resource. Instead, the proposed Endangered Species Act should be complementary to existing laws and regulations. It should define the gaps in the existing programs and, if any, correct them. Otherwise, it will run counter to the important streamlining goals and initiatives underway in the province.

You've already heard many people address the definition of habitat. Our concern is that the prohibitions against damage to habitat, section 10, requires a more specific definition than the one proposed in the legislation. The act, as written, requires the government, upon listing the species, to take early action on a potentially excessively large area. For example, scientific knowledge of migratory birds is limited and several of these birds are already on the list. Based on the proposed definition of habitat, if one of the bird species is declared threatened, the initial area that the province would be required to address could stretch from Pelee Island to Cochrane, Ontario. A vast area of land will be thrown into uncertainty and economic hardship, potentially with no benefit to the bird species.

The government's intent has been to protect the critical habitat of endangered or threatened species, and the act should focus on immediate protective action on the specific areas required to accomplish this goal.

Bowater also supports the government's establishment of COSSARO and believes that decisions should be based on science. We ask that the legislation specify that the membership of COSSARO have the technical knowledge to make valid decisions. The work of COSSARO is a critical component of the proposed act. However, if the membership does not have the depth of scientific experience and discernment, as well as social and economic resources, COSSARO may become too precautionary or too conservative. For example, if the committee membership has little or no expertise on a particular bird species and the information available to the committee states that the populations are in decline in an area, the panel may not understand the reason for the apparent decline and propose an inappropriate classification. They may actually cause detriment to the species or cause undue social impacts.

Therefore, we encourage you to develop a membership mix that ensures that the committee can make decisions using the best information and resources available, all the while protecting species and limiting unnecessary adverse social impacts.

I reiterate that Bowater is committed to working with the government to manage all the resources on public lands with sound, sustainable practices. We must make certain that we collectively protect endangered species. We believe we can do so within this act if:

- the act acknowledges other existing legislation and does not duplicate efforts;
- the definition of habitat is more specific to each species; and
- COSSARO has a balanced representation and appropriate technical support.

In making these minor amendments, we believe we will make certain that we will collectively protect endangered species. However, we will do so in a way that provides certainty for resource users, including the forest industry, while not adding unnecessary red tape. Thank you.

**The Chair:** Thank you, Mr. Groves. You've left enough time for one brief question and answer, starting with the PCs.

**Mr. Ouellette:** Thank you for your presentation. I appreciate you coming down from the Bay. You mentioned quite a few times that it's "too undefined," whether it's the habitat issue or whether the membership on the committee—you listed some specific ones. Maybe you could give us, with the 28 years' experience you've had, some of the background, for example, on the interpretation of marten guidelines throughout the various offices in the province and how that has impacted industry.

**Mr. Groves:** I've been in committees where you've had to develop the guidelines. I understand it's a difficult process. When you have a broad, diverse part of the province, it is hard to write one guideline that matches all, but the application of the guidelines is probably the greatest concern for the forest industry because one person's interpretation of the guideline, which varies from location to location, could have serious impacts.

So even though the intent may not be there, as in the case of even a recovery strategy, and that's our greatest grief, you'll write a recovery strategy for the province, but once it gets implemented in a location, it may have a totally different intent. At that point in time, as you are the resource user, you have no defence. You accept it.

**The Chair:** Thank you, Mr. Groves. Mr. Bisson.

**Mr. Bisson:** For somebody who has been employed as a forester for years and been involved in forest management planning—it's just a simple question. We've been doing a lot of this work through the forest management plans. What do you say now? It's like a validation of what has been done up to now, I guess is what I'm getting at.

**Mr. Groves:** I'd like to be able to believe it's a validation that what we're doing now is correct, but the fact that you're coming out with a new act implies that what I'm doing now is not enough, and I guess that's what I kind of wonder: Where do you go next? We have been doing a lot of practice in implementing prescriptions for a variety of species. We've seen improvements in some of those species. Where do we go?

**Mr. Bisson:** I know, when talking to people in the forest industry, that there's this whole sense of, "What do you think we've been doing for the past number of years?"

My quick question to you is this—

**The Chair:** That was the question, Mr. Bisson.

**Mr. Bisson:** When you talk about linking the two together—

**The Chair:** Your time is up, unfortunately.

**Mr. Bisson:** I was just trying to take their time.



**The Chair:** Take whose time?

**Mr. Bisson:** The government's time.

**The Chair:** I know. You're doing a good job of it too.

**Mr. Bisson:** They get all the time they want.

**The Chair:** Who's speaking on behalf of the government before I do turn it back to Mr. Bisson? Anybody? Mr. Bisson, continue then.

**Mr. Bisson:** They're so accommodating today.

My question is that when you talk about linking this act to the sustainable forestry development act so that the forest management planning manuals are in sync with what happens here, does that represent any problem in any kind of way if such an amendment is brought forward?

**Mr. Groves:** Basically, that's what we're looking for.

**Mr. Bisson:** But to make this act consistent with forest management, or forest management consistent with this?

**Mr. Groves:** In forest management planning, I believe we're doing the right work. I think the process as proposed in forest management planning—and implemented—is more engaging with the public. There are more local people involved, it's a more thorough process than what you're proposing here and a more open process. I think the forest management planning process is a step above when it comes to developing recovery plans than what we've seen here.

**The Chair:** Thank you, Mr. Groves. Thank you very much for attending today.

**Mr. Miller:** Mr. Chair, can I ask either legislative research or legislative counsel to advise us on how this law will interact with the Crown Forest Sustainability Act so we can have a better understanding as to whether the large areas of northern Ontario that are currently under forest management plans will—if there's going to be a duplicating process or not, or how it's all going to work out or proposed to be worked out?

**The Chair:** Very good. Thank you.

#### CPAWS—WILDLANDS LEAGUE

**The Chair:** The next delegation is Janet Sumner and Anna Baggio, CPAWS-Wildlands League. Welcome to the committee. Make yourselves comfortable. You've got 10 minutes; you can use that any way you like. Try to leave some time for questions at the end. I know it's tough with 10 minutes, but if you could, that would be appreciated.

**Ms. Janet Sumner:** Thanks very much. That's okay. I'll certainly give it a try.

Thank you very much for allowing me to speak today to the committee. My name is Janet Sumner. I'm the executive director of Wildlands League. We have two offices, one in Toronto and one in Thunder Bay. We believe that an Endangered Species Act is a last chance for species. If our policies and programs were actually working that are designed to manage for species, then we wouldn't need an Endangered Species Act. But unfortunately, that's not true.

I want to congratulate the government for introducing a strong new Endangered Species Act and to urge all parties to pass Bill 184 before the summer. Giving Bill 184 unanimous all-party support would be consistent with the will of the people of Ontario.

I have attended all of the stakeholder consultation meetings, which started in May 2006. I have seen the bill develop through each phase of the consultation, with many elements altered, based on industry and landowner concerns, as well as some reforms.

In my estimation, the bill is a balanced, science-based approach that focuses on protecting endangered species and their habitat while recognizing the need for support and participation from industry and landowners.

The strengths of this bill are important to retain, and they are: the purpose section; the importance of protecting species across their geographic range; the science-based approach to listing species at risk and the role of the Committee on the Status of Species at Risk in Ontario; the prohibitions on damage to species and habitat; the requirement to develop recovery strategies for endangered and threatened species and management plans for special-concern species; and recognition of aboriginal rights.

In addition, we recommend several areas for improvement. Sections 54 to 55 should be strengthened to ensure that habitat regulations will protect enough habitat that the species' true protection and recovery are not compromised. If this is not done, it is possible that only a nominal habitat protection could occur, and through a regulation in some cases. The species would perish despite combined efforts of the landowners and users.

In section 11, the act must require implementation of recovery strategies. This is already the case in Nova Scotia's Endangered Species Act, for example. In addition, it is vital that the new legislation state the minimum elements needed to be contained in a recovery strategy, which would include things like identification of the habitat that should be protected or managed to help recover the species. If this is not done, we could see the act fail. The act would scientifically list species and protect the habitat, only to have it undone with inadequate recovery strategies that do not include habitat.

The current provisions require the minister only to respond to recovery strategies. In sections 54 and 56, this provision provides for exemptions and is contrary to the purpose of protecting endangered species and should be removed. If it is not removed, any exemption should be subject to the advice of an independent expert panel, and the matter should be decided in the Legislature, where we would have full public scrutiny and debate.

#### 1730

I also want to address some of the concerns that we've heard today around mill closures and job losses in the north. That's absolutely a fact of the current situation: Mill closures and job losses are occurring in the forestry sector. This government has already responded with a series of subsidy packages in excess of \$1 billion. We think that an adequate response to mill closures and job losses must be taken on by a government. It would



include looking at a diversification of markets, moving to FSC and getting out of Ontario and starting to talk about the great products that we have here. Currently, there are over 600 companies that wish to buy fibre that is ecologically harvested. Increasingly, the demand is that we not cut in caribou habitat.

An Endangered Species Act is not an economic strategy for forestry; it is a backstop for species on the brink of extinction. Thank you.

Anna?

**Ms. Anna Baggio:** Thank you for hearing us this afternoon. I just wanted to make a couple of comments on, first of all, this notion about managing for species in the north. One of the previous speakers talked about how they've been managing for moose and how they've been doing it for many years—moose, deer and other species. While that policy might have made sense, our knowledge has changed, our knowledge has advanced, and we know that that policy of managing for moose is actually detrimental to other species like caribou and wolverine. So while that may have made sense, our new knowledge is telling us that it doesn't make sense any more. It means that we shouldn't have to be married to it or continue to implement that policy when it no longer works.

This is why it's so important that we have endangered species legislation that will take into account new knowledge that is coming from conservation biology and accredited scientists, and that will help us to come up with policies that will keep species like caribou on the landscape. Caribou isn't the only species at risk in northern Ontario; wolverine are in trouble and so are lake sturgeon. So while we may have quite a few species in southern Ontario that are in trouble, let's not forget that northerners and the north are not off the hook. Those species are just as important as any species in southern Ontario. We need to make sure that all species get addressed with this endangered species legislation.

**The Chair:** Thank you very much. You've left about a minute each for each of the parties. Mr. Bisson is not here, so I'll go to Mr. Orazietti first.

**Mr. Orazietti:** Thank you for your presentation. Can you tell me how important the COSSARO body is to you? The debate that we seem to be having during committee over the last few days is that we have individuals who would suggest that the minister should have discretion as to whether or not a species be listed and others who would say that that should not be a political decision; it should be automatically listed and moved forward from there with the flexibility tools to address habitat issues and the like. Do you want to comment on that scientific body for me, please?

**Ms. Sumner:** Yes, I would love to. I was actually at the stakeholder meetings when this issue came up. I'm firmly convinced that the reason it needs to be a scientific listing is, if you look at the current situation, you have many, many species that are scientifically determined to be in trouble and they are not listed because it has been left to a political decision. If we continue to leave it to a political decision, it allows us not to actually look at what

is really happening. If species are endangered, they need to be listed, and that needs to be a scientific decision, not a political decision.

**Mr. Orazietti:** Can I have one follow-up here, Mr. Chair? You referenced in your comments the job losses in northern Ontario. I represent the riding of Sault Ste. Marie, and economic development and a natural resource-based economy is very important to my constituents and to northern Ontario. What do you say to individuals in the forestry sector and communities? We've had a number of northern Ontario mayors make presentations to the committee about the importance of balancing the economic priorities of northerners and the province. We want to move forward with greater protections for endangered species—and certainly this is a priority of mine as well—but we also need to ensure that we're protecting the economic livelihood of thousands of people throughout this province as well. Do you see this act being able to do that, and how?

**Ms. Sumner:** I don't see that that's the purpose of this act. I think the purpose of this act is to be a backstop for our endangered species. What we need to be doing is taking a much more proactive approach to the situation that's occurring in the north around mill closures and job losses.

**The Chair:** Thank you very much. Your time is up, unfortunately. We're going to the opposition.

**Mr. Miller:** Thank you for your presentation. First of all, I'd like to note that you are happy with the consultations and that you said you were invited to all the consultations, but I'd like to note that first of all, we're sitting here in Toronto; we're not up in Thunder Bay or Dryden or other places. We have people in this room who have travelled a long way at great expense to be here, and we just heard from a union that was not invited to the consultations. I know I received e-mails from many groups that were not happy about the fact that they were not invited to these small group meetings that the minister set up sort of after the fact. So I think it's been made clear by a lot of the people who have demonstrated their interests in this bill that they haven't been happy with the consultations.

On the issue of the listing, we've heard from a lot of groups that they'd like to see either the minister have some discretion in the listing process or community knowledge to be taken into account in the listing process, or that there be applied science. I think by that they mean people who have experience in the field in the COSSARO listing process. Can you comment on that? How stuck are you on the way it's presently envisioned?

**Ms. Sumner:** Yes, it does need to be a scientific listing, because that's what's occurring. We need to have somebody say, "This is scientifically what's occurring." I believe that the bill has been changed based on industry input and landowner input to include a minister's council, an advisory council that will provide some of that knowledge to the body determining scientific listings. So my understanding is that the bill has already been changed to accommodate those concerns.



**Mr. Miller:** But that's an advisory council that is not involved in the listing process.

**Ms. Sumner:** It's providing advice to the listing process.

**Mr. Miller:** I suspect—and frankly, the worry I have with the way it currently is set up is the interim period before you have species-specific regulation in effect, in that you have automatic listing, which could freeze all habitat for a period of three years, and that could very dramatically affect activities in the north and around the province. I think that's probably what a lot of industries have concerns with, the automatic listing process.

**The Chair:** Thank you, Mr. Miller.

Thank you very much for coming today. Unfortunately, your time is up.

#### NORTH AMERICAN FUR ASSOCIATION

**The Chair:** Our next delegation is from the North American Fur Association, Tina Jagros and Bob McQuay. The floor is all yours. You have 10 minutes. If you have any time left at the end, we will split that evenly among the three parties for questions.

**Ms. Tina Jagros:** Thank you, Mr. Chair. Bob McQuay and myself are here representing the oldest and largest wild fur auction house in the world. For those of you who may remember your social studies classes, we're the part of the Hudson's Bay Co. that's 337 years old. We're proud to say that we're here in Ontario. Clearly, Ontario has been a leader in terms of wildlife management and we've been partners with the Ministry of Natural Resources as well as the international fish and wildlife agencies for Canada and the United States; we've been the host for CITES convention, for CITES officers—that's a Convention on International Trade in Endangered Species—from Canada, the United States and Mexico. So we fully support managing and ensuring that we have a wildlife that's sustainable for the generations to come.

However, we believe that Bill 184, the Endangered Species Act, as is written currently, has an unintentional outcome. I'd like Mr. McQuay to address that.

**Mr. Bob McQuay:** We're specifically concerned about the section the panel has recommended in the act prohibiting the "killing, harming, harassing, capturing, taking" and, specific to us, the "possessing, collecting, buying, selling, trading" of a listed endangered or extricated species. We bring in fur from about 30,000 trappers across North America. As Tina alluded to, we're the largest auction house in wild fur in the world—we're certainly the biggest in North America—and almost all of that fur comes through our facility in Toronto, from Florida right through to the northwest territories, Yukon and Alaska. We sell this fur on a consignment basis on a commission and we have permits and, under the control of the ministry, a dealing licence to import this fur for resale out of our jurisdiction in Toronto. There are only two other auction houses—much smaller than us—one also in Ontario, in North Bay, and a very small one in British Columbia that's almost insignificant.

1740

These species that you've listed—certainly we don't feel any threat from the protection of these species in the province. Wolverine, badger and grey fox are insignificant to us as produced in Ontario. Going back, as you see on page 3 of my notes, we've only received 17 wolverine from Ontario in the last four years, one badger in four years, and no grey fox. However, the quantities up above that we sell: in one year alone, 233 wolverine, 9,375 badger and 21,400 grey fox, mostly coming from western Canada or areas in the United States where these are certainly not threatened or endangered in any way.

In dealing with our customer base, these people who trap want to sell their fur in one location. We had a similar instance with bears a few years ago, where the regulations were rewritten and a bear which was an incomplete hide with a claw missing became a part, and therefore illegal in the province, and everywhere else in North America where these bears could be sold as a fur bear had to be returned to our client base because the act in Ontario prevented them from being even possessed in this province.

We're looking for very little: simply a wording change in your act that would protect these three species from being produced in Ontario for sale, but allow us to continue the importation and sale of these species from other legal jurisdictions across North America in our facilities here in Rexdale. So it's the source of origin which is audited by the MNR and, according to our reporting system, very accurate. We simply want to be able to continue on importation and sale of these species here in the province that didn't come from this jurisdiction. A simple wording change to refer to origin or production or harvest in the province of Ontario would satisfy our needs completely.

Questions?

**The Chair:** Thank you. You've left about two minutes for each party, starting with Mr. Orazietti.

**Mr. Orazietti:** Thank you for your presentation. I guess I can ask you to comment on other aspects of the bill. The issue around identification of endangered species—the COSSARO body is the aspect that we've had probably most discussion around. Can you comment on that and how you feel about that?

**Mr. McQuay:** I have a great deal of confidence in the Ministry of Natural Resources in this province dealing with trapping issues. They set quotas on these species according to their scientific and biological management systems. They're already in place. I understand there are no quotas for these three species in Ontario, so in fact if one was trapped, it would be an incidental catch. We have all the confidence in that science and biology for the trapping community and for us as an auction company. It's the ruling around the interpretation of it. If I leave to question the origin situation we brought up, I can see an MNR officer coming into our building in about two weeks and pulling a bunch of our fur out of our building that came from out of province or out of state. I don't think it's Ontario's intention to export their regulations as far as the act is concerned, and that's exactly what it says



now. I don't want to leave anything up to the MNR or the lawyers to decide on our behalf. Our business is extremely important, that we have the diversity offering that we bring into that building. It attracts about 900 buyers to every sale from around the world, and they come to buy a complete offering of wild fur. Eliminating three species from my list will reduce the number of buyers coming to our sales and it will certainly reduce the number of trappers shipping fur to our auction.

**The Chair:** Thank you, sir. Going to the opposition, Mr. Ouellette.

**Mr. Ouellette:** Thank you very much for your presentation. Currently, what happens with, say, black bear if it's missing a claw or claws at your auction sale?

**Mr. McQuay:** It is only illegal, Jerry, in this province because it's considered a part, according to the regulations. We have to turn it over to the Ministry of Natural Resources officer who looks after our facility. He confiscates it from us and more often than not returns it to the producing party, if he's out of province. If he's from Ontario, charges in fact could be laid. More often than not, it's lack of knowledge by the trapper or the hunter, that he can't have a bear without claws on it. They're very inexpensive. It takes about a day to put one up, and for \$30 or \$40 for the hide, a lot of them don't bother to spend the six hours on the feet to prepare them for a taxidermist. So it becomes a fur item. It doesn't need feet on it for that. But they are only illegal here in this province.

**Mr. Ouellette:** So why would you limit the amendment—and I would hope that you brought an amendment with you—to only list badger, wolverine and grey fox? What happens if additional species are added to that list and—

**Mr. McQuay:** That is a concern with polar bears and cougars. We think the Ministry of Natural Resources is in charge of setting quotas on these and has done a good job, based on science. I assume if another species got listed, this same regulation would apply to Ontario. The change I'm asking for is that a listed species that you want to stop the trading of has to be from the province of Ontario and not expand your regulation to all of North America, which in fact is what it does right now.

**Mr. Ouellette:** Thank you.

**The Chair:** Thank you, Mr. Ouellette. Mr. Bisson?

**Mr. Bisson:** No, that's fine. He answered the question pretty clearly.

**The Chair:** Very good. Now, either somebody's cooking popcorn or something's on fire. Does everybody smell what I smell?

**Mr. Bisson:** I think it's the government whip's office.

**The Chair:** Do you think that's what it is?

Thank you very much for attending today.

**Ms. Jagros:** Thank you for your time.

**The Chair:** Actually—I'm sorry; I didn't mean to bring you back—we could squeeze in one more. That would leave us about a minute to run upstairs and vote. It's entirely up to the committee. Okay?

## EARTHROOTS

**The Chair:** Earthroots: Josh Garfinkel, parks campaigner. Thank you for coming, Mr. Garfinkel. You've got 10 minutes. At exactly 10 minutes, you're going to see all of us sprint out of here to vote, so certainly, if you can make sure you're on time on this.

**Mr. Josh Garfinkel:** I won't take it personally.

**The Chair:** Thank you.

**Mr. Garfinkel:** First off, I'd just like to say good afternoon to the Chair and to the members of the committee. As you know, I'm speaking today on behalf of Earthroots. We're an Ontario-based environmental organization that actually represents 12,000 supporters across Canada. For over 20 years, our group has been dedicated to preserving wilderness and wildlife throughout the province.

Earthroots has long played an active role in lobbying the provincial government to have stronger laws that support and strengthen our vital network of protected areas, diverse forms of habitat, and the rich scope of wildlife that dwells in Ontario. As an organization, we are pleased at the ecologically necessary steps that the government is beginning to take to address the loss of biodiversity. Moreover, we are encouraged by the fact that the environment is now regarded as a top-priority issue by the public, paralleling other critical areas of concern such as education and health.

I am extremely grateful for the opportunity to speak in this forum today. I'd like to say how encouraging it is that the government has taken the step of introducing new legislation for endangered species in Ontario. We are enthused by the fact that this has been referred to the standing committee on the Legislative Assembly. We are equally thrilled that the Liberal government is transforming an election campaign promise from 2003 into a thorough, comprehensive and balanced piece of legislation that not only addresses the rapid rate of species decline, but also reflects the shifting attitudes about the need for stronger species protection in the province.

What makes the legislation so unique is that it focuses on both science-based listings of species at risk as well as mandatory habitat protection. Bill 184 is a direct result of thorough industry and public consultations, facilitated by Ontario's Ministry of Natural Resources. What makes this act so strong is that the Committee on the Status of Species at Risk in Ontario is an independent panel that's making crucial decisions about species whose populations are in jeopardy. The fact that the findings of this committee are based on both scientific facts and aboriginal traditional knowledge indicates that Bill 184 provides a multi-faceted, balanced approach.

Even though the decision of classification falls under a separate committee that I'm speaking to today, I think it's important to mention that from my organization's standpoint, the error surrounding the classification of the genetically distinct and ecologically critical eastern wolf was a shortcoming. Since Earthroots has long been a vocal proponent for stronger regulations in place to protect the range of the vulnerable wolf populations in



the province, the fact that the eastern wolf remains a species of special concern is a highly symbolic mistake. Considering that the species' population levels are low and mortality rates are high, we strongly advise that the wolf be reclassified as threatened on the updated list.

Furthermore, in the proposed legislation there are extensive definitions of species that also include subspecies and genetically or geographically unique species. These are clear, comprehensive listings of species which emphasize the necessity of preserving a species across a geographic range. This is absolutely vital.

Another meaningful feature found in the draft legislation is in section 10, in which a prohibition on damage to the habitat for endangered and threatened species is proposed. However, since habitat loss is the chief cause of species loss and endangerment, the new legislation needs to make more significant strides to actually afford more meaningful habitat protection. What this requires is designation of more protected areas in places that species at risk currently inhabit or could potentially inhabit.

1750

It's also critical to emphasize the significance of the draft legislation calling for mandatory management plans for special-concern species. Section 5 sheds some clarity on the rules of classification. The Committee on the Status of Species at Risk in Ontario defines this classification as a species likely to become endangered if limiting factors are not reversed. Considering this concept, one of the flaws in the proposed legislation is the lack of preventive measures taken to minimize the chances of a species becoming classified as endangered. Unfortunately, the act requires the minister only to "respond" to recovery strategies. It is more sensible and sustainable in the long term to consider ways to prevent endangerment, as opposed to implementing recovery strategies for a species which is on the brink of extinction. That is why there should be an extremely high regard placed on preventive measures in addressing special-concern species in Ontario.

The vague wording that is found in section 11 of Bill 184 is potentially problematic. This section contains general descriptions, and ultimately the bill falls short of actually outlining what critical components are required in a recovery strategy. What needs to be included is the delineation of specific threats to a species in its habitat that incorporates the advice of the Committee on the Status of Species at Risk in Ontario. In turn, there should be a clear definition of a species' habitat, including what is essential for its recovery and its survival. Within this section, there should be a listing of activities that are likely to lead to the destruction of habitat. Consequently, there needs to be a realistic time frame in place for the institution of the strategy.

Earthroots supports the stewardship program, but actually has some reservations about the funding levels that accompany it. The government has only allocated \$18 million over four years to engage the support of private landowners. We feel this is a relatively small amount of money for a crucial component of this legislation. As recently pointed out by the well-respected

Environmental Commissioner of Ontario, there is good reason to question the Ministry of Natural Resources' ability to enforce this legislation. Gord Miller points to the lack of capacity for wildlife monitoring and enforcement efforts. An example that illustrates this point is the 20% reduction in field officers since 1992. Earthroots has legitimate concerns over the feasibility of effectively enforcing legislation and monitoring potential infractions when there have been systematic budget cuts for the last 15 years.

Opponents to Bill 184 are asserting that the government is rushing this through the Legislature without sufficient debate or proper public input and consultation. Ultimately, the truth is that this bill has been subject to more extensive public review and scrutiny than the majority of new laws would get. Quite simply, calls for more consultation are unfounded. Pre-bill consultation began a year ago, with an in-depth paper given to all participating stakeholders, which encompassed representatives from forestry, mining, aggregates, hunting and farming organizations throughout the province. Ontario's bill of rights has a mandatory consultation period, and this was met. The minister was extremely fair in terms of the perspectives that he heard, giving more than adequate attention to input provided from all stakeholders and of course listening to the recommendations of the panel. As well, the Ministry of Natural Resources conducted a completely separate process, which entailed aboriginal community consultation.

While I'm not entirely astonished that the Ontario Forest Industries Association did not come out and endorse the Endangered Species Act, I have to say that I am extremely disappointed in their claim that there has been insufficient consultation. Of even greater concern and perhaps with a higher degree of shock value came the comments from the president of the Ontario Landowners Association that reflected the disapproval he had for the proposed legislation.

**The Chair:** Just so you know, Josh, you've got about two minutes.

**Mr. Garfinkel:** Thanks.

In the April 29, 2007, edition of the Ottawa Sun, Jack MacLaren called on members of the Ontario Landowners Association to bulldoze many acres of habitat to express strong opposition towards Bill 184. If the threats that he made were personally converted into action, he would be committing an illegal act, since his land is habitat for the endangered logger shrike. This attention-getting ploy does not reflect the sentiment of most landowners in this province, and this ultimately makes Mr. MacLaren's comments that much more damaging.

In regard to the cries for more consultation, I must stress that there is no time for further deliberation. This would merely be a transparent stall tactic. For every additional moment of hesitation and procrastination, species like the eastern wolf and woodland caribou would lose more and more of the forests which they so clearly depend upon for their survival. We call on all parties to see the need for protecting endangered species and support Bill 184, for we have an obligation to think



about the long-term health of future generations and how the diverse plant life and the rich variety of wildlife help form our cultural identity as Canadians.

Ontario's endangered species have experienced an unbridled rate of decline, and the dominant factors that have led to this have been climate change, habitat loss and overhunting. It is encouraging that more and more people are seeing how real and serious the issue of climate change actually is. More people are starting to see the connections: how wildlife plays such a pivotal part in upholding ecological balances and how plants aid in alleviating pollutants from the atmosphere and maintaining a carbon balance.

Earthroots applauds the government for directing the much-needed energy to preserve species across the province. The Endangered Species Act has not been touched since 1971, and revising this act was long overdue. Considering how development has increased exponentially in southern Ontario, where most of the species at risk are situated, considering how logging practices have changed and how much greater the human presence is, we need to make legislative changes that will sustain wildlife populations across the board.

There are approximately 200 endangered plants and animals in Ontario, which is nearly 40% of all the endangered species across Canada. On the one hand, this is a number that could make us as Canadians feel ashamed. On the other hand, we have the potential to reverse this embarrassment to a feeling of pride and the satisfaction of moving forward—

**The Chair:** Josh, unfortunately I'm going to have to stop it, but we have it all in writing and that was a great presentation. Thank you very much for your co-operation.

We're recessed.

*The committee recessed from 1756 to 1801.*

#### CHRISTIAN FARMERS FEDERATION OF ONTARIO

**The Chair:** Okay. We're back for our final presentation of the day: the Christian Farmers Federation of Ontario, Henry Stevens and Nathan Stevens: Can you come forward, please?

*Interjection.*

**The Chair:** No. The last group actually has cancelled. This will be our final group for today.

Mr. Stevens and Mr. Stevens, you've got 10 minutes to make your presentation. You can use that time any way you like. If you could leave some time at the end for questions, that would be appreciated.

**Mr. Henry Stevens:** Thank you, Mr. Chairman and members of the committee. My name is Henry Stevens and I'm the vice-president of the Christian Farmers Federation of Ontario. I farm in Ontario's agriculture heartland, Perth county, and I know your colleague John Wilkinson quite well.

Thank you for the opportunity to address you today. As you may know, the Christian Farmers Federation of Ontario is the second-largest general farm organization in

this province. We represent approximately 4,300 farm families. The Christian Farmers Federation of Ontario has held the concept of stewardship as one of its cornerstones in its approach to agriculture in Ontario. The opening preamble of our vision statement is "of a renewed agriculture, which is productive, keeps its people on the land, and protects our provincial resources of land, water and air."

The CFFO believes that private landowners, and farmers in particular, are well positioned to be leaders in environmental stewardship initiatives and programming, including assisting in the recovery of endangered species and habitat protection. We also believe that farmers who actively involve themselves in these stewardship practices should be rewarded for their efforts. Based on these premises, we have developed the following response to the proposed Endangered Species Act, 2007.

**Principal concerns:** The CFFO supports legislation that protects endangered species and their habitat. However, this does not mean that we endorse every facet of the proposed act. The CFFO supports the adoption of provincial changes to legislation that will proactively and flexibly protect endangered species within Ontario through the use of stewardship agreements and permits. The definition of "habitat" in clause 2(1)(b) with respect to species that are not protected by a regulation under clause 54(1)(a) is far too broad in scope. In particular, the phrase "an area on which the species depends, directly or indirectly" and the inclusion of "migration" and "rearing" are of great significance as to the scope of this definition. Using an ecosystem approach, it is entirely possible to stretch the "indirect" dependence of a species to huge tracts of land within the province. The CFFO recommends that the clause 2(1)(b) definition of habitat be rewritten to reduce its scope.

The CFFO supports the development of legislation that provides economic incentives and removes disincentives. However, we are concerned about the lack of details regarding the stewardship fund provided for in section 46. The CFFO believes that for every right given to a citizen of Ontario, there is a corresponding responsibility that should also be taken up by that same citizen. As such, the CFFO recommends that the Endangered Species Act, 2007, does not make compensation a legislated right without a corresponding responsibility. If private land use is constrained by mandated recovery or management plans to protect endangered species, compensation should not be automatic. Rather, the CFFO recommends that public monies be offered to private landowners who are constrained by the Endangered Species Act, 2007, provided they also participate in the restoration or preservation of the habitat of the endangered species.

The CFFO supports the use of a group of representative professionals to scientifically identify species at risk in conjunction with their federal counterparts and decoupled from recovery planning processes. The CFFO recommends the inclusion of other stakeholders in the development of the endangered species list, perhaps as



observers, as it would increase awareness of and build trust in the system.

The development of recovery planning strategies should include direct input from a wide variety of stakeholders. While the protection and recovery of endangered wildlife in Ontario is a public good, creating recovery and protection strategies that unnecessarily harm the competitiveness of Ontario's economy may result in an overall negative impact for the citizens of Ontario.

Stakeholders from affected industries have expertise in maintaining the competitiveness of their industry. The inclusion of stakeholder perspectives from industries such as agriculture and forestry in developing recovery plan aids in the creation of recovery strategies, which can both preserve species at risk and minimize the impact on competitiveness.

CFFO recommends that the use of private lands not be constrained by mandated recovery or management plans if a species is in the "threatened" or "special concern" categories. However, such landowners should receive remuneration for participation in voluntary restoration and management plans.

While CFFO believes that both threatened and special-concern species are a priority, our suggested limitation on required participation relates to the incentives to both MNR and private participants that are to be built into the legislation. By making involvement in threatened and special concern a voluntary action, MNR and those who design recovery strategies will be required to design realistic plans and provide adequate compensation for lost income potential. Without these two priorities in mind, recovery initiatives will attract very little voluntary participation or industry support. Furthermore, at the end of the day, programs with strong, positive voluntary incentives will have a stronger participation rate and yield better results than legislation that requires unwilling participation.

CFFO supports increases to penalties under the act, recommending that Ontario's regulations be consistent with those of the federal Species at Risk Act. The previous act's fines were insufficient to deter deliberately destructive behaviour. The old \$50,000 fine was so low that it could be treated as an operating expense for larger operations. The old disincentive had the net effect of being an incentive because of its inadequacy.

Sources of funding for the stewardship program must be considered from the perspective of the public good. In our comments to the review panel made in January 2007, we stated that penalties collected under the act should be earmarked for inclusion in the stewardship fund. While we still believe that penalties have the potential to be used to augment the fund, we are concerned about the unintended incentive that may be created by implementing this type of revenue mechanism.

The unintended incentive that CFFO fears will be created is that the MNR, a financially stretched ministry by their own accounts, will out of necessity become the equivalent of commissioned salesmen when searching for potential violations of the Endangered Species Act.

Directly tying the health of a branch of the MNR with fines collected creates a strong—

**The Chair:** Mr. Stevens, you're the last presenter of the day, so if you need to take a pause and have a drink, I was going to suggest you do that. We're not rushed for time.

**Mr. Stevens:** Thank you. Directly tying the health of a branch of the MNR with fines collected creates a strong moral hazard with potentially huge negative ramifications for Ontario agriculture.

Therefore, sufficient funding for the stewardship program, investigation and inspection operations and the administration of the program by the MNR should be allocated from the general budget on the basis that the protection of endangered species is a public good.

Finally, CFFO is concerned with the powers of entry granted to enforcement officers with respect to potential biosecurity hazards that could be incurred by their entry on to an agricultural operation. The legislation provides protection from entry into a dwelling without a warrant—subsection 23(6).

The CFFO submits that this provision needs to be extended to include any area where livestock are housed or areas of land used for pasture, as well as storage areas for grains and vegetables, for the purpose of maintaining the high levels of biosecurity that Ontario agriculture holds itself. Thank you.

**The Chair:** Thank you. You've left about a minute for each party. The PCs?

**Mr. Miller:** Thank you very much for your presentation. You've spent a lot of time on it and it's certainly in-depth. You mentioned that for special-concern or threatened species, essentially you get more bang for the buck if that part is voluntary in terms of stewardship programs versus the government forcing farmers and others to support the programs.

**Mr. Stevens:** We believe that the carrot approach is always more effective than the stick, especially from the point of view of getting buy-in to support the program.

**Mr. Miller:** Very good. Certainly the details for this bill will be in the regulations as well. That's really where the rubber is going to meet the road. Hopefully the government will give some time for input and feedback on the regulations, because a lot of the details will be in the actual regulations. Thank you for your presentation.

**The Chair:** Mr. Orazietti.

**Mr. Orazietti:** I'll just leave you with one question. First of all, thanks for your presentation and thanks for taking the time to be here today. Is there anything you can think of that will help us, as we go through the next couple of days here and finalize this piece of legislation, constructively improve our ability to protect endangered species in Ontario?

**Mr. Stevens:** I think it's very important that it's done from a scientific approach, for one thing, so that, as the previous speaker mentioned, it's not a political decision. There's always the fear that if the minister or the Premier has the final say, then it's going to appear to be political. They may not intend it that way, but just to have that propriety so that it is based on science. I think that will

go a long way to alleviate concerns in the agricultural community.

**Mr. Oraziotti:** Thank you very much.

**The Chair:** Thank you very much for being here today.

We're going to recess very shortly. Twelve o'clock tomorrow is the deadline for amendments. We're back in this room on Wednesday, either at 3:30 or when orders of the day start. Thank you very much. We're recessed.

*The committee adjourned at 1812.*





## **STANDING COMMITTEE ON GENERAL GOVERNMENT**

### **Chair / Président**

Mr. Kevin Daniel Flynn (Oakville L)

### **Vice-Chair / Vice-Président**

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)

Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)

Mr. Kevin Daniel Flynn (Oakville L)

Mr. Jerry J. Ouellette (Oshawa PC)

Mr. Mario G. Racco (Thornhill L)

Mr. Lou Rinaldi (Northumberland L)

Mr. Peter Tabuns (Toronto–Danforth ND)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

### **Substitutions / Membres remplaçants**

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr. Dave Levac (Brant L)

Mr. Phil McNeely (Ottawa–Orléans L)

Mr. David Oraziatti (Sault Ste. Marie L)

Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

### **Also taking part / Autres participants et participantes**

Mr. Norm Miller (Parry Sound–Muskoka PC)

### **Clerk / Greffière**

Ms. Susan Sourial

### **Staff / Personnel**

Ms. Carrie Hull, research officer,  
Research and Information Services



# CONTENTS

Monday 7 May 2007

<b>Endangered Species Act, 2007, Bill 184, Mr. Ramsay / Loi de 2007 sur les espèces en voie de disparition, projet de loi 184, M. Ramsay .....</b>	<b>G-1111</b>
Sierra Legal Defence Fund.....	G-1111
Mr. Robert Wright	
Ontario Forestry Coalition .....	G-1113
Ms. Lynn Peterson	
Tembec Inc.....	G-1116
Mr. John Valley	
Mr. Michael Martel	
Mr. Chris McDonell	
Nishnawbe Aski Nation.....	G-1118
Grand Chief Stan Beardy	
Sierra Club of Canada, Ontario chapter.....	G-1121
Mr. Dan McDermott	
Association of Municipalities of Ontario.....	G-1122
Mr. Doug Reycraft	
ForestEthics .....	G-1124
Ms. Gillian McEachern	
Domtar Inc.....	G-1127
Ms. Bonny Skene	
Dr. Kandyd Szuba	
Northwestern Ontario Municipal Association.....	G-1128
Ms. Anne Krassilowsky	
David Suzuki Foundation.....	G-1130
Ms. Rachel Plotkin	
Buchanan Forest Products .....	G-1132
Mr. Hartley Multamaki	
Communications, Energy and Paperworkers Union of Canada, Thunder Bay.....	G-1134
Mr. Marvin Pupeza	
Bowater Canadian Forest Products Inc.....	G-1136
Mr. Richard Groves	
CPAWS–Wildlands League .....	G-1138
Ms. Janet Sumner	
Ms. Anna Baggio	
North American Fur Association .....	G-1140
Ms. Tina Jagros	
Mr. Bob McQuay	
Earthroots .....	G-1141
Mr. Josh Garfinkel	
Christian Farmers Federation of Ontario .....	G-1143
Mr. Henry Stevens	

16  
13



G-48

G-48

ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 9 May 2007

# Journal des débats (Hansard)

Mercredi 9 mai 2007

**Standing committee on  
general government**

Endangered Species Act, 2007

**Comité permanent des  
affaires gouvernementales**

Loi de 2007 sur les espèces  
en voie de disparition



Chair: Kevin Daniel Flynn  
Clerk: Susan Sourial

Président : Kevin Daniel Flynn  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 9 May 2007

Mercredi 9 mai 2007

*The committee met at 1550 in room 151.*

## ENDANGERED SPECIES ACT, 2007

LOI DE 2007 SUR LES ESPÈCES EN VOIE  
DE DISPARITION

Consideration of Bill 184, An Act to protect species at risk and to make related changes to other Acts / Projet de loi 184, Loi visant à protéger les espèces en péril et à apporter des modifications connexes à d'autres lois.

**The Chair (Mr. Kevin Daniel Flynn):** Okay, ladies and gentlemen, we're in orders of the day so we can commence. We're dealing with Bill 184, An Act to protect species at risk and to make related changes to other Acts, beginning with a standard question: Are there any comments, questions or amendments to any section of the bill, and, if so, to which section?

Beginning with section 1, this is a government amendment. Mr. Orazietti.

**Mr. Norm Miller (Parry Sound–Muskoka):** Mr. Chair, if I may add some comments at this point, I'd just like to get on the record that we sure could have used a lot more time in this process to have more time to prepare amendments and to consult further with the people interested in this bill.

I just want to get on the record that listening to people until 6 p.m. on Monday and having to have an amendment in on Tuesday at noon is a little ridiculous on a bill this complicated. Certainly we've done our best to provide as many amendments as possible. But giving a little more time, especially with the legal nature of drafting up amendments, would make a lot more sense. So I would like to record that protest and have it duly noted, please.

**The Chair:** Thank you, Mr. Miller. Any other comments?

**Mr. Gilles Bisson (Timmins–James Bay):** Just to echo that, I want to put on the record again that all of us here support the direction that this legislation is taking and, quite frankly, is really necessary to be done. The problem is, we have a whack of amendments here that we have very little time to look at, either government or opposition members, in order to make sure that we accomplish what we want at the end. The amendments are here. I'm sure that all of us have written amendments based on our best guess of what the amendment should

be worded like, but you've got two hours to go through this thing, and I'm not convinced that we got it right.

Just for the record, rushing legislation is a bad thing.

**The Chair:** Thank you, Mr. Bisson.

**Mr. David Orazietti (Sault Ste. Marie):** The comments are noted. This, as everyone knows, is not out of the ordinary in terms of a time frame for amendments to be submitted and procedures like this to move forward.

My understanding is that at 5 o'clock all amendments are deemed to have been moved. Is that the case, Chair?

**The Chair:** Yes, it is.

**Mr. Orazietti:** So we'll get started with the first section.

I move that section 1 of the bill be amended by adding the following paragraph:

"3. To promote stewardship activities to assist in the protection and recovery of species that are at risk."

**The Chair:** Any comments, questions?

**Mr. Jerry J. Ouellette (Oshawa):** "To promote stewardship activities": Will there be any funding allocated with that? Should that not include a funding aspect to make sure the funds are available?

**Mr. Orazietti:** Chair, \$18 million has been identified in the stewardship program. This adds an additional purpose to the bill in promoting stewardship activities.

We're supporting this amendment and call for a vote on it.

**The Chair:** Any further comments? Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 1, as amended, carry? All those in favour? Those opposed? That's carried.

Moving on to section 2, there is a government amendment on page 2.

**Mr. Orazietti:** I move that the definition of "habitat" in section 2 of the bill be struck out and the following substituted:

"'habitat' means,

"(a) with respect to a species of animal, plant or other organism for which a regulation made under clause 54(1)(a) is in force, the area prescribed by that regulation as the habitat of the species, or

"(b) with respect to any other species of animal, plant or other organism, an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding,



“and includes places in the area described in clause (a) or (b), whichever is applicable, that are used by members of the species as dens, nests, hibernacula or other residences; (‘habitat’).”

**The Chair:** Any comments, Mr. Orazietti?

**Mr. Ouellette:** Chair, I have a comment.

**The Chair:** Hold it a minute. Are you finished, Mr. Orazietti?

**Mr. Orazietti:** I am finished, Chair.

The importance here is to ensure that both direct and indirect reliance on habitat is protected.

**Mr. Ouellette:** Should not the “dens” reflect active dens? Because there’s a great number of species out there that relocate dens on an annual basis and there are some that use the same den on an annual basis. What you want to make sure is that the ones that have been abandoned that are no longer being used can be—the reason for that is, for example, mange in the coyote can be passed on from year to year as the same den is used, so it would kill off an entire area or an entire section of animals. If it reflected “active dens” it would specifically show that the ones that are being currently used are the ones being protected.

**Mr. Orazietti:** My comment to that is, if the area is not being used, then it’s not an area considered protected or part of that habitat. I think the assumption is fairly clear there.

**Mr. Bisson:** Just a quick question.

**The Chair:** Hang on just a second. Mr. Ouellette, are you finished?

**Mr. Ouellette:** That’s fine.

**The Chair:** Mr. Bisson?

**Mr. Bisson:** Just as a follow-up, I understand your point that if it’s no longer an active area, it won’t be protected. But what happens in the case that you have dens in an area that is protected? Will the MNR have the ability to deal with the issue that Mr. Ouellette raises? I think it’s a very valid one. If you’re going to have the potential of passing on disease year over year because you don’t destroy dens from previous years for whatever biological reasons, I don’t know. It just seems like a—

**Mr. Orazietti:** I would think that in the recovery plan and getting information on the ground at the site by individuals involved in that, those assessments are going to be made appropriately to address that.

**Mr. Bisson:** So, just to be clear, in the recovery plan you’ll be able to deal with this issue, you say?

**Mr. Orazietti:** Absolutely.

**Mr. Bisson:** Okay. We’ll take your word for it.

**The Chair:** Thank you. No further speakers? All those in favour of the amendment on page 2? Those opposed? That motion is carried.

Moving on to page 3 in your agenda, a PC motion. Mr. Miller or Mr. Ouellette?

**Mr. Miller:** I move that clause (b) of the definition of “habitat” in section 2 of the bill be struck out and the following substituted:

“(b) with respect to any other species of animal, plant, or other organism, a distinct area of specialized function

on which the species directly depends to carry out its life processes, such as critical areas used for reproduction, rearing, hibernation, migration, feeding and places that are used by members of the species as dens, nests, hibernacula or other residences, but not including an area on which the species does not directly depend, a generalized area or an area where the species formerly occurred or has the potential to be introduced.”

If I can explain why, in this bill I think the thing we heard from a lot of different groups is the worry that when a species is listed by the COSSARO committee, there is automatic protection. There is a time period of up to, I believe, about three years until the species-specific habitat protection regulations could be put into place, where the definition of “habitat” is very broad. The worry is that with that broad definition of “habitat,” until the species-specific regulations are created, especially for northern communities, for example, you might inadvertently cause some major socio-economic upheaval until the species-specific regulations are formed.

We heard from groups such as the Ontario Federation of Anglers and Hunters, the Ontario Forest Industries Association, the Ontario Bait Handlers, and the Ontario Waterpower Association that spoke to that, as well as many other groups. So by defining “habitat” a bit more, it takes away that possibility of which I was speaking and that so many groups talked to us about.

**Mr. Ouellette:** The issue of the active dens is dealt with in the “does not directly depend” clause so that it removes any possibilities there.

**The Chair:** Any further speakers? Mr. Orazietti.

**Mr. Orazietti:** The previous amendment specifically identified “depending directly and indirectly,” and this amendment contradicts that because it makes the definition narrower by only indicating “directly depends.” We can’t support that, and I think members of the government, on the previous amendment, supported the earlier one. So we will be voting against this amendment.

**Mr. Miller:** Just to be clear, there were many groups that came before us that want this defined. I’m supporting this legislation, but I’m worried about that situation where a species is automatically listed and then you, as government, for example, after a species has been automatically listed and before you make the species-specific legislation, could cause significant economic dislocation by your broad, broad definitions of species that could be all-encompassing, until you come up with the species-specific regulations on habitat that define an area more specifically.

**Mr. Orazietti:** I hear what the member is saying. The socio-economic impact—there are flexibility tools to assess those—

**Mr. Miller:** Later on in the process.

**Mr. Orazietti:** Absolutely. But the reality is, if you have a bird or a species that is at risk and we’re going to simply define the tree or the nest that it’s in and we’re not going to take into account any of the other surrounding areas on which it is relying for its existence, then the focus of the bill is going to be far too narrow and it’s not



going to achieve the intended purpose, which is to ensure that the species is able to survive and the things that it needs are available for it to survive. So it's absolutely essential to include both direct and indirect areas of habitat for its reliance and its survival.

1600

**Mr. Miller:** I disagree with you, and there were many groups that raised this point with us. I would like a recorded vote on this.

**The Chair:** Absolutely. Any further speakers? Hearing none, all those in favour of the PC amendment on page 3?

#### Ayes

Miller, Ouellette.

#### Nays

Brownell, Dhillon, Oraziatti, Racco, Rinaldi.

**The Chair:** That motion loses.

Moving on to page 4. It's a government motion.

**Mr. Oraziatti:** I move that section 2 of the bill be amended by adding the following subsection:

"Definition of 'habitat', cl. (b)

"(2) For greater certainty, clause (b) of the definition of 'habitat' in subsection (1) does not include an area where the species formerly occurred or has the potential to be reintroduced unless existing members of the species depend on that area to carry on their life processes."

**The Chair:** Any comments?

**Mr. Oraziatti:** The amendment is needed in conjunction with the new definition of "habitat" and the reorganization of this section based on the intent of the current wording in the bill. It provides that the habitat protection for species for which a regulation is not in force does not extend to places where the species formerly occurred or has the potential to be reintroduced.

**Mr. Miller:** This amendment addresses partly the point I was making in that you're defining "habitat" a little less broadly, so I would support that amendment.

**The Chair:** Any further speakers?

**Mr. Bisson:** I think it responds to some of the concerns that were raised with the previous amendments and seems to be in the right direction.

**The Chair:** Very good. All those in favour? Those opposed? That amendment is carried.

Shall section 2, as amended, carry? Those in favour? Those opposed? That is carried.

Moving on to section 3: NDP motion on page 5.

**Mr. Bisson:** I move that section 3 of the bill be amended by adding the following subsection:

"Term of office

"(2.1) A member of COSSARO shall be appointed for a term of three years and is eligible for reappointment."

A fairly straightforward amendment in that, in most public appointments when we put people on commissions or boards or whatever, there's a term of appointment. We

recognize that there's an issue of people gathering knowledge, so we don't want to limit their term. We could have brought an amendment here that says, "Three years, and you're done in six." We recognize that people will build knowledge and probably will serve on COSSARO for long periods of time. But I think you need an ability to review those appointments every now and then for both sides of the equation.

**Mr. Oraziatti:** I hear where the member is going with this. The problem is that it's inconsistent with the current management board guidelines. In a situation where we have someone—a scientist—who might only be able to serve a year or two years, they might be reluctant to take a three-year appointment. It also doesn't allow us to stagger appointments where you might have everyone leaving the board at one particular time and you would lose a lot of this knowledge all at once, so it's problematic in that sense. I hear where the member's going. I don't know that it's a major issue, but we're not going to be able to support the amendment as worded because of the fixed three-year time frame.

**Mr. Bisson:** I'm not going to waste a lot of time on it. Just to say that if a person is appointed and only wants to serve a year, nothing stops them from quitting, obviously. The second point is, nobody would quit all at the same time because people could be appointed for life. The only issue is that every three years there's a reappointment process. That's just a bit of a safeguard for both sides. If you have people on either side of the equation who are doing whatever, you have an ability for a committee to call before the public appointments committee people from COSSARO and have a chat with them. That's all that is. We recognize and agree with the government that these people who are appointed to this are going to have to build knowledge and they already bring knowledge with them. You don't want a wholesale change of people; that would be bad. This is just a way of making sure that we have an ability to review appointments.

**The Chair:** Any further speakers to this? Seeing none, all those in favour? Those opposed? That motion loses.

Moving on to the PC motion on page 6.

**Mr. Miller:** I move that section 3 of the bill be amended by adding the following subsection:

"Advocacy

"(6) A member of COSSARO shall not engage in advocacy activities on matters of public policy related to the functions of COSSARO."

This amendment is an effort to ensure that COSSARO is comprised of experts who only focus on the listing of species and not on an alternate agenda. This request was made by groups such as the Greater Toronto Home Builders' Association. Certainly, it's my position that COSSARO should make decisions based only on the best available science, and I believe that this amendment ensures that.

**The Chair:** Any speakers from the government side?

**Mr. Oraziatti:** The member has raised a good point. I think the concern is that members on COSSARO are not specifically involved in the public policy aspects of this.



The other thing I want to say is that the next amendment that we have here will more specifically achieve what the member has identified. We will identify that through the Lobbyists Registration Act and the specific role. We don't want to say that the individual cannot be involved in any other issue of advocacy that is non-related to this. The next amendment will more clearly outline that, so we'll be unable to support this particular one.

**Mr. Miller:** I'll look forward to seeing that amendment. As you say, my complaint right at the outset is that I'm seeing the amendments for the first time, so I'll look forward to seeing that amendment.

**Mr. Bisson:** Very quickly: I think Mr. Miller is right. I had a chance to go through those amendments yesterday, but they're not fresh in your mind, so I understand that. For the record, I have a problem with your amendment, to be blunt. I understand where you're trying to go, but I believe that we should take care in making sure that the people we appoint are people who are going to do the job. That's why we brought the previous amendment in regard to giving an ability for the public appointments committee to do a review, because if you do have somebody who's not acting in a way that's consistent with what the intention of the act is or whatever, you should have an ability to bring them back.

I will not be supporting that amendment because I think it is people's right to advocate. That's what we all do.

**The Chair:** Any further speakers? Seeing none, all those in favour of the amendment? Those opposed? That motion loses.

Moving on to the government motion on page 7.

**Mr. Orazietti:** I move that section 3 of the bill be amended by adding the following subsection:

"Lobbying

"(6) A member of COSSARO shall not, with respect to any matter related to this act,

"(a) act as a consultant lobbyist within the meaning of subsection 4(10) of the Lobbyists Registration Act, 1998; or

"(b) act as an in-house lobbyist within the meaning of subsection 5(7) or 6(5) of the Lobbyists Registration Act, 1998."

I think it's fairly straightforward. It just clarifies their role. If an individual is hiring a consultant or someone to act on their behalf, they need to be independent. It can't be that person who's giving them the direct information that would contradict, perhaps, what someone who is independent may suggest.

**Mr. Bisson:** I'm probably going to be in a minority on this one. First of all, my question: COSSARO is not full-time position, paid salary, right? Can somebody make a living being a COSSARO member?

**Mr. Orazietti:** I am not sure on that, but I don't believe so.

**Mr. Bisson:** I wouldn't think so.

**Mr. Orazietti:** I'm getting senior staff here from the ministry indicating that that is not the case.

**Mr. Bisson:** What happens if a person appointed to COSSARO happens to work for an environmental firm or works in industry as a biologist? Let's say you're working for such-and-such consulting company, that you're a biologist for—OFIA, for example. That would probably be a good example: a person who is a biologist at OFIA or Anglers and Hunters or Greenpeace or the Wildland League. Does that mean to say that those persons employed could not be members of COSSARO? Is that what we're saying here? Because I think a lot of the expertise we're looking for is inside those organizations.

**Mr. Orazietti:** Anyone who's registered as a lobbyist.

**Mr. Bisson:** No, but the second part: "act as an in-house lobbyist within the meaning of subsection 5(7)." I'm just concerned about the following: You have all kinds of organizations out there that have a lot of expertise—Wildland League, Tembec, etc.; I don't care who it is—and they have biologists and experts on staff who I think may be the people we're going to be drawing on to be members of COSSARO. Maybe I'm misunderstanding (b), but does that preclude one of those people working for one of those companies from being employed on COSSARO? If that's the case, I don't want to vote for this. I understand what you're trying to get at, but I just want reassurance about what we're doing here.

1610

**The Chair:** Just for the sake of clarity, would you like to try answering it again, Mr. Orazietti, or would you like to staff to come forward?

**Mr. Orazietti:** It might be helpful if staff makes a comment on this. The intent is to ensure that there's independence from COSSARO.

**Mr. Bisson:** I hear you and I agree with you, but I just want to make sure that we don't throw the baby out with the bathwater.

**The Chair:** If we're all on the same page, let's get it clear. Would somebody like to come forward from staff?

**Mr. Orazietti:** Alison MacKenzie is here with MNR—she's legal counsel—as well as Debbie Ramsay, who's the manager of species at risk.

**The Chair:** If you'd identify yourself for Hansard—I think you heard the question. It was very specific.

**Ms. Alison MacKenzie:** Yes, I did, thank you. My name is Alison MacKenzie. I'm legal counsel with the Ministry of Natural Resources's legal services branch.

What this motion says is that a person who is a member of COSSARO cannot, while they are appointed to COSSARO, act as a lobbyist with respect to matters related to this act and act as a lobbyist within the meaning of the Lobbyists Registration Act, which is lobbying the government. So they can't lobby the government with respect to matters related to this act, but it doesn't bar them from their other employment.

**Mr. Bisson:** Let me make it really simple. If, let's say, I'm a biologist with Anglers and Hunters and I'm a member of COSSARO, I'm often in contact with government officials. If I'm with Earthroots and I'm a member of COSSARO, I'm often in contact with government offi-



cials in my duties as the biologist or the expert. Does that mean that I can no longer do that?

**Ms. MacKenzie:** You cannot lobby the government with respect to matters related to this act. You can still do other things in relation to your employment.

**Mr. Bisson:** Let me keep it simple. Let me make it even more simple. I just want to make sure—the problem when we rush this stuff is that we could get it wrong. If I'm the biologist and my normal course of duties with Earthroots is to come and speak to MNR officials, parliamentary assistants and members of the assembly about issues having to do with the preservation of wildlife, would I be barred from doing that?

**Ms. MacKenzie:** You would be barred from a portion of it if it was related to matters related to this act, yes.

**Mr. Bisson:** Okay. I will vote against it because I think that those people have to be—those are the people we're going to draw on.

**Mr. Oraziotti:** If someone makes that choice, then they're in a conflict of interest, so we can't have—

**Mr. Bisson:** But you may end up having to quit your job to be a member of COSSARO, under the definition. I understand what the government's trying to do. You're trying to deal with a real concern that was raised by members who came to you. I'm not giving you guys heck here, but the experts we want are those very same people who are in these organizations.

**Mr. Oraziotti:** I understand. There needs to be independence for this body.

**The Chair:** Just so I'm clear, Ms. MacKenzie, as the Chair: If a person is appointed to COSSARO, they would not be able to lobby the government in relation to the species-at-risk legislation. But anything else, they would have the same rights as any other—

**Ms. MacKenzie:** Yes, and any other types of issues as well, other types of public policy issues.

**Mr. Bisson:** But the problem is that if you're the biologist for whoever, you can't do your job.

**The Chair:** I see what you're saying.

**Mr. Miller:** I hope that it achieves what it's supposed to achieve. As Mr. Bisson said, the rushed nature of this means that there is that possibility that we won't have it right, but I see the intent of this. Certainly, we did hear from many different groups that wanted community knowledge on COSSARO, but I think they stated that they didn't want bias to be showing on COSSARO. So I will support this amendment.

**The Chair:** Any further speakers? Seeing none, all those in favour of the amendment on page 7? Those opposed? That motion is carried.

Shall section 3, as amended, carry? Those in favour? Those opposed? It is carried.

Moving on to section 4 on page 8 of your agenda, government motion.

**Mr. Oraziotti:** I move that section 4 of the bill be amended by adding the following subsection:

“List of species to be assessed

“(1.1) COSSARO shall ensure that the list referred to in paragraph 2 of subsection (1) includes every Ontario species that,

“(a) has been classified by the Committee on the Status of Endangered Wildlife in Canada as extirpated, endangered, threatened or of special concern under the Species at Risk Act (Canada); and

“(b) has not yet been assessed by COSSARO.”

The intent of this is to ensure that there is a link between the federal act and the provincial act, so that any species that would be identified by the federal act would have priority in terms of identification or being dealt with through COSSARO. It's fairly straightforward.

**The Chair:** Any further speakers on that? All those in favour? Those opposed? That motion is carried.

Shall section 4, as amended, carry? Those in favour? Those opposed? Section 4 is carried.

Moving on to section 5: There are no amendments before us. Shall section 5 carry? Those in favour? Those opposed? That is carried.

Moving on to page 9, section 6, an NDP amendment.

**Mr. Bisson:** It's a fairly straightforward amendment.

I move that section 6 of the bill be amended by adding the following subsection:

“Tabling of report

“(3) The minister shall table the annual report in the Legislative Assembly.”

All we're attempting to do here is that currently, under the legislation, COSSARO has to give the report to the minister on an annual basis. This is just to make sure that it doesn't stop on the minister's desk, that there's some transparency, that the report is tabled in the Legislature for all to see. It can't just be sitting in a minister's office.

**Mr. Oraziotti:** It's fairly straightforward at this point that under section 50 the reports need to be made public, as it stands now, so this seems to be a bit of an extra process. The intent is also to develop a website for endangered species so that the information will also be made available in this regard and will be much easier to access. Currently this information is required to be made public as well, so we won't be supporting the—

**Mr. Bisson:** Where is it in section 50?

**The Chair:** Mr. Bisson, you had a question?

**Mr. Bisson:** Where in section 50, please? I might have missed that. Maybe you're right.

**The Chair:** If you'd like to come forward, Ms. MacKenzie.

**Mr. Miller:** Is that section 50?

**The Chair:** Perhaps while we're all searching for our section 50s, Ms. MacKenzie can assist us again. Can you point us specifically to where we should be looking?

**Ms. MacKenzie:** Yes, I can. It's in the bill as introduced in first reading. It's on page 35. It's section 50, numbered paragraph 3. You see that that section says, “The minister shall ensure that the following information is made available to the public,” and paragraph 3 says, “All reports submitted to the minister by COSSARO under section 6.”

**Mr. Bisson:** That's fine. I withdraw the amendment.



**Mr. Miller:** I think that's good. However, I see no harm in Mr. Bisson's amendment that it be also reported to the Legislative Assembly, so I would support Mr. Bisson's amendment.

**Mr. Bisson:** Again, I'm not trying to play silly bugger; it's just to clarify and make the act consistent. That's all it is. If the government wants to vote for it, fine. If not, we know where you're at.

**The Chair:** At this point, there is no motion. Is it going to stay withdrawn, Mr. Bisson?

**Mr. Bisson:** No, it's not withdrawn. Let's see what happens.

**The Chair:** Okay, the motion is still on the floor, moved by Mr. Bisson on page 9. Any further speakers? Seeing none, all those in favour? Those opposed? That motion loses.

**Mr. Bisson:** The only reason I left it on was just to watch you vote against it.

**The Chair:** Mr. Miller, we have a PC amendment on page 10.

**Mr. Miller:** I move that section 6 of the bill be amended by adding the following subsection:

"Peer review

"(3) COSSARO shall not report a classification of a species to the minister unless the classification has been subject to peer review by a person who is not a member of COSSARO."

We had a lot of groups that came before the committee that were concerned about bias and concerned about the science that decides on a listing being accurate. That was northern municipalities, and it was industry. I think that's a valid consideration. The intent of this is just to add a step where there's peer review. I can see absolutely no harm. It seems to be a fairly standard practice that there be a peer review. This would ensure that the listings are the best science, and it would also remove any bias, if there is any, in the COSSARO committee's listing process.

1620

**Mr. Oraziotti:** I think we agree on the process of a peer review. My understanding is that it's the timing. Your reference here that COSSARO not report a classification of species to the minister that's not been subject to a peer review: Under the proposed terms for COSSARO, outside peer review must be required before it comes forward for consideration. We have the timing of the peer review prior to that. It's different than this and we won't be able to support this, but the importance of peer review is incorporated in the terms of reference for COSSARO today.

**Mr. Miller:** For my clarification then, you're saying there is peer review before listing occurs?

**Mr. Oraziotti:** Right. Before COSSARO considers the species.

**Mr. Bisson:** I've got a bit of a philosophical problem with the amendment. I hear what the member is trying to do, but either we appoint good people to COSSARO and we trust them or we don't. The reason that I wanted to bring a motion to have a renewable three-year term

renewable was that, if you do have a problem, you have a mechanism. The only mechanism we'll have now under the legislation is for the minister—I guess the minister could and would have the right—to remove somebody from COSSARO if they weren't doing their job, right? I would imagine; that's the way I read the legislation. I understand what the member's trying to do, because there's nervousness out there that people may go awry and do harmful things one way or another, but we don't do this in any other appointed body. I'm having a philosophical problem with this.

**Mr. Miller:** The parliamentary assistant has said that there will be peer review occurring.

**Mr. Bisson:** No, but there's a difference. Let me just make it clear. The way I see a difference is that I understand that we have to get peer review in order to check our data and make sure that we're interpreting stuff the right way. Scientists know to do that; that's how they're trained. I would assume that's going to happen. But to say that every recommendation coming back from COSSARO has to be peer-reviewed—we don't do that in forest management plans. Forest management plans aren't peer-reviewed, are they? I don't know anywhere else that—

**Mr. Oraziotti:** That's why this is not following COSSARO's recommendations; this is prior to, before the evaluation is done.

**Mr. Bisson:** Did I read it wrong?

**Mr. Oraziotti:** No, that's the difference in terms of what I'm saying is taking place with the terms of reference for COSSARO now as compared to the amendment. Our timing is different in terms of when the peer review takes place. That's why we're saying we can't support the amendment, but I recognize the point that the member is making, which is that there is validity in the peer review process.

**Mr. Bisson:** Just for the record again—I don't want to be a silly bugger on this, but I expect that we're going to appoint competent people to COSSARO and they're going to do their job. We don't do this with anybody else. We don't do it on forest management plans; we don't do it on parks management plans; we don't do it anywhere else.

**Mr. Miller:** I know Mr. Bisson heard that some of the northern mayors are very concerned about having their industry or the forestry industry shut down. This is an extra safety step in the process to make sure that a species is actually endangered or threatened before it is listed.

**Mr. Bisson:** We have other amendments later to deal with that. That's why we're proposing other amendments to deal with land swaps in the event there's loss of forestry and to be consistent with forest management plans in order to deal with that. I might be wrong on this, I'm prepared to admit, and I'll stand aside. But we don't do it with anybody else, and I just have a bit of a problem with that—

**The Chair:** Okay. There's a motion on the floor moved by Mr. Miller. Those in favour? Those opposed? That motion loses.



Shall section 6 carry? Those in favour? Those opposed? It's carried.

Section 7: PC motion on page 11.

**Mr. Miller:** I move that section 7 of the bill be struck out and the following substituted:

"Species at risk in Ontario list

"7. The minister may make regulations listing species as extirpated, endangered, threatened or special concern species."

We heard from countless groups, including a former Minister of Natural Resources, that felt that the minister should have a role to play in the finalized list of species. This offers some flexibility in the listing process that I think gives, certainly the northern communities and a lot of the groups that made the extraordinary effort to come down here to speak to this committee for the 10 minutes they were given, some comfort that those accountable, being the Minister of Natural Resources, have some flexibility in the initial listing. I recognize that further along in the process there is flexibility built in where the minister can recognize socio-economic effects. But my concern is still the automatic protection in listing and the period before the species-specific habitat regulations kick in, so that's the idea behind this.

**The Chair:** Mr. Oraziotti, any comments?

**Mr. Oraziotti:** I certainly understand where the amendment is coming from, but this is a fairly fundamental aspect of the bill, and if we were to support this, it would contradict what we, as members in the Legislature, agreed to on second reading, which is that these species will be listed on a scientific basis. It's not going to be left to ministerial discretion.

Various presenters made comments that it is an improvement on the federal process, where there is an option as to whether or not you list it even if you have scientific information that indicates that the species is in fact endangered.

It puts us on par, as well, with provinces like Nova Scotia that have an automatic listing.

This is a fundamental aspect of the bill that we don't want politicized. The process following a listing is one that will employ the flexibility tools, where there will be the ability to determine how best to address recovery and habitat protection and so on going forward. If we're going to make positive steps in this province to protect species at risk, we really need to ensure that we depoliticize the process of listing a species, that the scientific body make the determination, and then we move forward in the political environment with the public and with stakeholders as to how best to develop the recovery plan and how best to achieve the goal that I think we all want to see achieved here.

**Mr. Ouellette:** Unfortunately, the government has just stated that the minister currently doesn't have the ability to do his job.

The minister is given ultimate responsibility for looking after these things by the elected individuals within the province of Ontario.

As we all know, 50% of all lawyers lose in court. This particular aspect has been taken to court in a number of jurisdictions, whereby authority given to the minister by the elected officials of a jurisdiction is trying to be removed at this very point. In those courts, the lawyers lost and the minister had to take on the full responsibility of the action.

What I find is taking place here is that the ministry is no longer going to be responsible, but an unelected official body will then have control in dictating what takes place. Currently, the reason that it's moving forward must be because the current minister does not have the ability.

I would support this and would ask the members to review this, because what you're doing is you're taking away the minister's responsibility and onus to look after the wildlife in the province of Ontario and passing it on to an unelected official body.

You may not be supportive of my views or my position. However, remember that in the event that a new government comes in—and as I've said many times, ministers change, Premiers change, governments change, but the bureaucracy stays forever—an unelected official body can come and go and those individuals can be stacked in one's favour and not look to the best overall interests of the elected individuals in the province, and I would ask all members to support this on that basis.

**Mr. Bisson:** There are two different constituencies on this particular issue. There are those who would like to have the listing be based purely on the scientific—and I understand what the government is doing, and I think in a perfect world that's great. But there is an issue of accountability.

The reason that I put the amendment in earlier to review the appointments is because we need some way of making sure that people are accountable. What happens if we don't list species that are at risk that should be listed, or vice versa, if we do something that's going to impact on somebody's ability to make a living? It might be right, it might be wrong, but there are a lot of people in northern Ontario and other places who feel that their community's viability could be put at risk. That's something that's not going to go away.

I understand those on the environmental side who will say, "Well, you know, Bisson, you're not completely with us on this," but there are two constituencies here. I think to basically say that at the end of the day there shouldn't be any accountability is wrong. We need to find a mechanism to make COSSARO accountable for its actions, and barring anything being in there to do so, I think you have to support this.

1630

**Mr. Miller:** At second reading of the bill—I like your comment, to Mr. Bisson, saying, "in a perfect world," because in a perfect world, I support listing by science. If it's black and white and a species at risk, it should be listed. However, we also heard from lots of northern towns and industries that are very concerned about their livelihood.



The way I would see this working in reality is, most of the time—the great majority of the time—COSSARO will appropriately list a species based on science and the minister won't do anything, because they're right. But there may be circumstances in which the minister would want some flexibility, even if it means delaying it until you get the species-specific regulations in place, so that you don't devastate the economy of some northern town that is already being devastated by lots of other things.

**Mr. Bisson:** To the parliamentary assistant: What ability does the minister have if people are going beyond what they should be doing or not going far enough? What ability does the minister have to deal with it? Where is the accountability? Where in the legislation or future amendments are we dealing with accountability?

I believe people are going to go there and try to do the right thing, but we're all human beings and sometimes we do it right and sometimes we get it wrong. Certainly in this Legislature we've seen lots of examples of that—right?—on both sides of the aisle. Where here—is there something that I'm not seeing?

**Mr. Oraziotti:** The points that have been raised by both the NDP and the Conservatives today with respect to the concern over the economy and northern communities and northern mayors making presentations—I was here for their presentations as well. As a northerner, I know very well, first hand, the challenges that they face. We're confident that moving forward with this legislation will allow us to balance those priorities: the importance of ensuring that we're protecting endangered species in Ontario as well as, given the flexibility tools that are in this legislation, the ability to address the socio-economic impacts and issues that we face in northern Ontario.

The current legislation is less flexible than this. I think we'd all agree that there is very little flexibility, if any at all, in the current legislation.

So let's talk about how we can work with northern communities. Let's talk about how we can work with industry, with stakeholders and with other political representatives in the north, as your comments reflect, and achieve something that is very positive for all Ontarians.

The issue that is at hand before us is whether or not we're going to, based on science, allow the political discretion to determine whether or not the species is going to be listed. We need to get past that. We need to say that once science has determined that the species is endangered, we're going to recognize that that's in fact the case and we're going to develop the appropriate recovery plan, in partnership with the community, to ensure that we're able to meet that challenge. We need to ensure that these species are listed.

**The Chair:** Mr. Ouellette, then Mr. Bisson.

**Mr. Ouellette:** Certainly the current legislation, the implementation plans, if they're enacted and put in place properly, can account for any flexibility required.

One of the concerns I have, as expressed here in a number of statements by all parties, is that specifically the inference is that currently we're going to move forward on scientifically based decisions. How are the

decisions made now? How are those animals listed now, if they're not based on science?

**Mr. Oraziotti:** The point of this amendment, in my understanding, is that you're making the assertion that the minister have political discretion as to whether or not the species be listed. We believe that the scientific evidence—that should stand the test of all political parties and Ontarians—should be the test to be what determines whether or not a species is in fact listed.

**Mr. Ouellette:** But the inference is that the current listings are not based on science and that we're going to move to a science-based decision. No, that's not the case at all. All those cases that have come forward in the past have all been based on science decisions brought forward by the expertise found within the Ministry of Natural Resources currently. Now we're moving responsibility from the ministry and once again breaking down what once was the pride of the north. When you went to northern Ontario and somebody said, "Where do you work?" if you worked at the ministry—it didn't matter if it was a hospital or school—people knew you worked in the MNR. It's not the case now, and this is taking away that strength and ability directly within the ministry now, because they have that expertise, they have those scientists who are making those decisions. I just want to make it clear that it's there now, and it has the ability to move forward and even be better in the future if so desired.

**The Chair:** Mr. Bisson, further comments?

**Mr. Bisson:** Again, there are lots of amendments to go through. I don't want to stay on this for the next 30 minutes, just to say that I recognize that the people who are going to be appointed to COSSARO are going to try to do a good job—number one. But no human always gets it right. Maybe we don't have to go as far as saying the minister has to have the final say, because I understand what the issue here is. The issue is that we don't want a situation where you've got an unfriendly minister who says no to everything. That wouldn't be good either, because then you would never protect any species at risk. So I understand where the government is going.

I guess my quandary is, what do you do to make sure that at the end of the day there's some accountability? If you do have somebody or a group that gets it wrong, what mechanism do you have to make sure that there is a way of having a second look at it, either that we have not properly protected or that we have put somebody else and their economic viability—is there something in the legislation to allow that to happen?

**Mr. Oraziotti:** Chair, if I can ask—

**Mr. Bisson:** I want to be clear for the record: I understand why this is here. This is the thrust of the legislation, and I'm not opposed to the concept of having scientists make the decision to move forward. If you go completely the other way, you're never going to protect anything. I understand what we're getting at, but where is the accountability? Can somebody just come to us and talk to us?

**The Chair:** Who would you like to call forward, Mr. Oraziotti?



**Mr. Oraziotti:** If Debbie Ramsay, the manager of the species at risk program, could come forward, she could perhaps add some additional comments to this.

**The Chair:** Welcome, Ms. Ramsay. If you'd identify yourself—

**Ms. Debbie Ramsay:** Yes, my name is Debbie Ramsay.

**The Chair:** Thank you. Did you hear Mr. Bisson's question and understand it?

**Ms. Ramsay:** Yes, I believe the question is: What happens if COSSARO gets their assessment wrong? There is a number of areas in the bill where that can be addressed. One of them is section 8, which allows the minister to ask COSSARO to reconsider an assessment. The other thing is that if there is additional information related to science that indicates COSSARO should reconsider it at any point in the process, either immediately after it is assessed and listed or in the future if more information is available, the minister could refer it back to COSSARO.

**Mr. Bisson:** That opens up a whole other box.

**Mr. Miller:** Lead us through the process.

**The Chair:** Let's just have one question at a time.

**Mr. Bisson:** So what you're telling me is that at the end of the day, if COSSARO makes a decision to protect a habitat, the minister may get it wrong as well for political reasons and say, "I want to review this," and just delay it forever.

**Ms. Ramsay:** No, the minister can ask COSSARO to reconsider it and specify some time frame for that reconsideration.

**Mr. Bisson:** Does the legislation specifically put a time frame around the reconsideration?

**Ms. Ramsay:** No, the legislation does not, but the minister can ask COSSARO to reconsider it in a period of time.

**Mr. Bisson:** Then this is a moot point, because the minister at the end has the final say.

**Ms. Ramsay:** No, the minister does not have the final say, because once COSSARO assesses it, it is placed on the Species at Risk in Ontario list, and then from that, the protection provisions of the act would apply, including species and habitat protection. If the minister asked COSSARO to reconsider it, it still continues through that process, and if the classification changes, then the list is modified accordingly, for example, to say that it is not endangered or threatened.

**Mr. Miller:** So while the reconsideration is going on, it's still on the list. That's what you're saying.

**Ms. Ramsay:** That's correct.

**Mr. Miller:** I support the bill, but my concern with the process is that if you get it wrong in the stage from where it's listed until the specific regulations are made, basically all habitat is protected. It's at that stage that I worry that the effects might be negative for the livelihoods of people, particularly in rural and northern areas.

**Mr. Bisson:** Can I just ask one last question? Let's say there was the issue that Mr. Miller raises. It's going to take out of circulation X number of hectares of land

that impacts a forest sustainability licence. That puts a threat on a community. Is there any mechanism to deal with that?

**Ms. Ramsay:** There is a number of ways that could be dealt with, and one of them is in the flexibility tools that exist in latter portions of the legislation. For example, if there is an activity that's proposed that impacts a species or its habitat and it's considered to be a provincial social and economic interest, then the minister could issue a permit, but there's a process they would need to go through.

**Mr. Bisson:** That's after the list—

**Mr. Miller:** That's further down the line. It's the time from listing until that happens that I'm most concerned about.

1640

**Ms. Ramsay:** That's correct.

**Mr. Miller:** It could be three years. So you have some community that all of a sudden is basically bound, and the government can't do anything either, unless I'm missing something on this.

**Ms. Ramsay:** There's an interrelationship with the forest management planning process as well. In the majority of cases, the species at risk are more of a site-specific nature, at least the ones that will be coming up in the future. We're not dealing with future caribou, because we know that that one is going to be dealt with only through a specific regulation. When it's a species that has very localized or site-specific requirements, what I understand is built into the forest management planning process is a contingency area. So if they need to modify their activities, they have that contingency area which is there as a bit of a buffer for these types of situations where they need to modify their operations.

**The Chair:** Any further questions?

**Mr. Bisson:** I'm just uneasy about this whole thing, because what I'm hearing is two things: I'm hearing that there is a lot of wiggle room for the minister in some cases and not in others. What have we done here?

**The Chair:** Okay. Are there no further questions for Ms. Ramsay at this time?

**Mr. Miller:** A recorded vote, please.

**The Chair:** Any further speakers? Seeing none, a recorded vote.

#### Ayes

Miller, Ouellette.

#### Nays

Brownell, Dhillon, Oraziotti, Racco, Rinaldi.

**The Chair:** That amendment is lost.

Shall section 7 carry? Those in favour? Those opposed? That is carried.

Shall section 8 carry? Those in favour? Opposed? That is carried.



Moving on to section 9, page 12, there is a government amendment.

**Mr. Orazietti:** I move that clause 9(1)(b) of the bill be amended by striking out “possess, collect” at the beginning of the portion before subclause (i) and substituting “possess, transport, collect.”

It was identified by the enforcement branch that anyone who may be involved in this activity may be using some other means or some other person to transport it—for example, a courier or something like that—and may not be directly involved themselves. It’s more technical than anything, but it identifies a gap in the enforcement aspect of this bill.

**The Chair:** Any questions? Any comments? Seeing none, all those in favour? Those opposed? That motion is carried.

Moving on to the second government motion on section 9, on page 13.

**Mr. Orazietti:** I move that subsection 9(1) of the bill be amended by striking out “or” at the end of clause (a), by adding “or” at the end of clause (b) and by adding the following clause:

“(c) sell, lease, trade or offer to sell, lease or trade anything that the person represents to be a thing described in subclause (b)(i), (ii) or (iii).”

This deals with individuals who may participate in illegal trade by purporting to sell something that is endangered and thereby affecting the demand for endangered species. Again, it’s identified by the enforcement branch as an area we need to close a gap on. So you can’t sell anything that is actually endangered or that you are passing off as being endangered.

**The Chair:** Are there any questions or comments on that? Seeing none, all those in favour? Those opposed? That amendment is carried.

A PC motion on page 14.

**Mr. Miller:** I move that section 9 of the bill be amended by adding the following subsection:

“Possession, etc., of species originating outside Ontario

“(1.2) Clause (1)(b) does not apply to a member of a species that originated outside Ontario if it was lawfully killed, captured or taken in the jurisdiction from which it originated.”

Once again, I want to talk about the time frame. We had someone come before the committee on Monday afternoon, and then we had all of a few hours to get an amendment together. This came from North American Fur Auctions, which pointed out that they deal in furs coming from outside the province, and the way the bill currently stands—they gave the example that last year they traded over 21,000 grey fox, and if the bill passes they won’t be able to trade grey fox originating out of the country in places where they are not endangered. This is recognizing that so the bill doesn’t negatively affect the fur auction business in the province or even cause it to have to move outside the province to conduct business.

**The Chair:** Any further speakers? Mr. Bisson.

**Mr. Bisson:** I think what’s fairly self-evident is that we don’t have any jurisdiction to tell Manitoba or Florida what they can do when it comes to trapping, etc. This is just to make sure that what we do in Ontario is our business—I’m not saying that right. What we do in Ontario is under this act, but this act doesn’t have jurisdiction outside Ontario.

**Mr. Orazietti:** You’re quite right; we all heard the same presentation. My understanding is that this is going to be dealt with in regulation. We’re not going to be taking out individual examples and dealing with them in the legislation in this fashion. We want consistent regulations for all groups. This is going to be addressed by regulation, so that will be achieved in the bill.

**Mr. Ouellette:** Then why has the regulation for bear parts not gone through? This has been in place for years, and it’s still an ongoing problem that they have. It doesn’t occur. If it’s not addressed in the legislation, it’s going to dramatically affect these organizations. Passing it off to regulation will not assist the fur industry. By the time this passes and everything else comes into play, they still won’t have taken care of a five-year-old problem. Quite frankly, we started the process. We had COs there, but it wasn’t finalized because it was supposed to be done in regulation at that time. I don’t see that it’s going to be complied with in this fashion at all.

**The Chair:** Mr. Orazietti, then Mr. Bisson and then Mr. Miller.

**Mr. Orazietti:** I hear your concern, and it is not the intent of the legislation to impact other jurisdictions where these species, which may not be endangered, are actually taken. I’m going to ask legal counsel to come forward and comment on that with respect to the regulation applying to the fur industry.

**The Chair:** Unfortunately, I think you need to identify yourself again, even though we all know who you are.

**Ms. MacKenzie:** I’m Alison MacKenzie, legal counsel at the Ministry of Natural Resources.

This is a legitimate issue. There are a number of groups that are concerned about being given exemptions, and there is the power to make exemption regulations in the legislation. The ministry intends to deal with it through regulations. I don’t really know what more I can say, other than that. It is there; it can be dealt with in regulations.

**The Chair:** Let’s maintain the order we had before. Mr. Orazietti, are you finished?

**Mr. Orazietti:** I’m confident that this is going to be addressed through regulation. I’m told that that’s the intent. If the members feel strongly about that, we can deal with it right now and include it in the legislation. The government side is prepared to do that.

**The Chair:** Mr. Bisson, any questions for—

**Mr. Bisson:** Is he saying he’ll vote for it?

**Interjection:** Yes.

**Mr. Bisson:** That’s fine. That’s good.

**The Chair:** Thank you very much. There is a PC motion before us on page 14.



**Mr. Miller:** Recorded vote.

**Ayes**

Bisson, Brownell, Miller, Orazietti, Ouellette, Racco, Rinaldi.

**The Chair:** That motion carries.

Shall section 9, as amended, carry? Those in favour? Those opposed? Section 9 is carried.

Shall section 10 carry? Those opposed? That's carried.

Moving on to section 11, page 15, an NDP amendment.

**Mr. Bisson:** I move that section 11 of the bill be amended by adding the following subsection:

"Forest management planning

"(1.1) The persons who prepare a strategy under subsection (1) shall have regard to any forest management plans approved under the Crown Forest Sustainability Act, 1994 and to the forest management planning manual under that act."

Simply put, a lot of the work to protect species and habitat is being done in forest management plans. For example, as a forest management plan is developed, in order to be able to harvest particular areas of the licence you have to take into consideration moose habitat, beaver habitat, habitat for caribou, whatever it might be. All we're trying to do here is to say that whatever COSSARO does as far as its recovery strategy, you take into account what's being done in the forest management plan. The two have to work together so that you don't have COSSARO and the forest management plan sort of working opposite to each other.

1650

**The Chair:** Comments?

**Mr. Orazietti:** My concern is around the forest management plans that are currently in place being able to accommodate newly assessed species. Certainly, COSSARO can consider any other relevant information and would take that into consideration during the process. I think that's an expectation, but I don't want them to be bound by those plans, because a newly assessed or listed species may not be incorporated into that particular plan in a way that would ensure the appropriate recovery. So we can't support this particular amendment.

**Mr. Bisson:** I don't know how you don't link the forest industry into this. They're the ones that are on the ground doing the work. They're harvesting. They could have a negative impact on the species. All I'm saying is that you have to make sure that if there's a listing of a species and we develop a recovery plan, we have to take into account, through the forest management plan, the COSSARO stuff and vice versa. I don't see how that's a negative, because what you could end up with is the two working cross-purposes to each other.

**Mr. Miller:** I would support Mr. Bisson's amendment. We have one that's similar to it coming up a couple of amendments down the road. As I mentioned before in looking at this bill, just a couple of weeks ago I

met with a biologist in my riding who works in the forestry industry. He was meeting with me to get me to support the bill. He pointed out all the good work being done under the Crown Forest Sustainability Act and the forest management plans and the guides that they have, and how, in fact, for most crown land in northern Ontario, species at risk are taken into consideration through that process. So it seems to me to make sense to have regard for the forest management plans that have had a lot of money, time and effort put into them. You start a 10-year plan. You spend four years doing that plan, and there have also been some very good results from those forest management plans, specifically improvements in species at risk in the areas where those plans are in effect.

**Mr. Bisson:** There's another sub-issue here, and it was raised earlier by the legislative counsel for the ministry. Within the sustainable forestry development act and forest management plans, if we have to take out of circulation tracts of land, there's a mechanism in order to allow a trade: "You can't cut here because it's now protected, but we can go over here and give you an offset to cut somewhere else that's not at risk." And this links the two together to make sure that that can happen. So it addresses, in my view, to a significant degree the serious concern raised by citizens from northern Ontario, mayors and others, that everybody says, "Fine, let's protect the species, but if you're going to take out of circulation a tract of land to protect that species, there has to be a mechanism that the allowable cut of the company is offset somewhere else." I agree that sometimes that may be difficult to do, but certainly, in this current market you can do it, because there are more sawmills closed in northern Ontario than you can shake a stick at.

**The Chair:** Mr. Orazietti, any comments?

**Mr. Orazietti:** Other than to say that that goes on now; we know that. Those types of compensation, with trades in terms of—

**Mr. Bisson:** It happens in the act currently.

**Mr. Orazietti:** Absolutely.

**Mr. Bisson:** That's why I want to link them together. Do you follow where I'm going?

**The Chair:** Let Mr. Orazietti finish.

**Mr. Orazietti:** Chair, perhaps at this point, if I can have two minutes to have a discussion, that might be helpful.

**The Chair:** Okay. We're recessed for two minutes then.

*The committee recessed from 1655 to 1657.*

**The Chair:** We're back in order.

**Mr. Orazietti:** Far greater legal minds than mine are giving me information here, so let me do my best to elaborate on this. The fundamental purpose of COSSARO, in terms of the scientific evaluation that's going on to assess whether or not the species is endangered, is not one where the forestry management plans are going to have scientific information that can be used for that determination.

The point at which the forestry management plans would be taken into consideration is in terms of: Once



the species has been listed, what's the recovery strategy? What discretion, at that point, does the minister have in terms of working with stakeholders, with the industry? At that point, you take a look at the information in that forestry management plan to determine how best to balance both the socio-economic needs of the industry and the species. So linking the two at this point is not the appropriate time.

**Mr. Bisson:** Well, tell that to most communities in northern Ontario. There's a real fear—and it may be right; it may be wrong—that it could take out of circulation on allowable cut. If that happens in many communities across northern Ontario, it puts the economic viability of those mills in jeopardy. I think this is an opportunity for the government to send a signal to northern communities that we're interested in making sure the communities survive. It doesn't put at risk the species; just makes sure that we do that in a way that—

**The Chair:** Mr. Ouellette.

**Mr. Ouellette:** The statement is “shall have regard to.” It doesn't say “will.” It's a minor—it identifies the Crown Forest Sustainability Act. It “shall have regard to”; it doesn't necessarily mean it will.

**The Chair:** Thank you. A final speaker to this?

**Mr. Oraziotti:** I hear the members opposite, and they need to take into consideration the forestry management plans, and at the appropriate time, not during the scientific evaluation of whether or not the species is in fact endangered. No one on this side is suggesting that forestry management plans don't play a very, very important role in this act and in the process. But they need to play that role when the minister—and the recovery plan is developed and the appropriate steps are put forward. So we can't support it.

**The Chair:** Thank you. Any further speakers?

**Mr. Bisson:** A recorded vote.

#### Ayes

Bisson, Miller, Ouellette.

#### Nays

Brownell, Dhillon, Oraziotti, Racco, Rinaldi.

**The Chair:** That motion loses.

It's 5 o'clock, and I'm reading the instructions from the House:

“That, pursuant to standing order 46 and notwithstanding any other standing order or special order of the House relating to Bill 184, An Act to protect species at risk and to make related changes to other Acts, when Bill 184 is next called as a government order the Speaker shall put every question necessary to dispose of the second reading stage of the bill without further debate or amendment and at such time the bill shall be ordered referred to the standing committee on general government; and

“That the standing committee on general government shall be authorized to meet, in addition to its regularly

scheduled meeting times, on May 2, 2007, from 10 a.m. to 12 noon and May 7, 2007, from 10 a.m. to 12 noon for the purpose of conducting public hearings on the bill; and

“That the deadline for filing amendments to the bill with the clerk of the committee shall be 12 p.m. on May 8, 2007. No later than 5 p.m. on May 9, 2007, those amendments which have not yet been moved shall be deemed to have been moved, and the Chair of the committee shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill, and any amendments thereto. The committee shall be authorized to meet beyond the normal hour of adjournment until completion of clause-by-clause consideration. Any division required shall be deferred until all remaining questions have been put and taken in succession, with one 20-minute waiting period allowed pursuant to standing order 127(a); and

“That the committee shall report the bill to the House not later than May 10, 2007. In the event that the committee fails to report the bill on that day, the bill shall be deemed to be passed by the committee and shall be deemed to be reported to and received by the House; and

“That, upon receiving the report of the standing committee on general government, the Speaker shall put the question for adoption of the report forthwith, and at such time the bill shall be ordered for third reading, which order may be called on that same day; and

“That on the day the order for third reading for the bill is called, the time available for debate up to 5:50 p.m. or 9:20 p.m., as the case may be, shall be apportioned equally among the recognized parties; and

“That when the time allotted for debate has expired, the Speaker shall interrupt the proceedings and put every question necessary to dispose of the third reading stage of the bill without further debate or amendment; and

“That there shall be no deferral of any vote allowed pursuant to standing order 28(h); and

“That, in the case of any division relating to any proceedings on the bill, the division bell shall be limited to 10 minutes.”

Moving on, then, to the amendment you would have before you on page 16 of your agenda, it's a government motion. Those in favour? Those opposed? That motion is carried.

Moving on to page 17, a PC motion—

**Mr. Miller:** Excuse me, Chair. Just for clarification, can we get an explanation of any of these motions that we are passing?

**The Chair:** I don't believe so. I'll check with the clerk if we can.

**Mr. Bisson:** Let's do this wholesale. This is kind of stupid. They're all going to pass. We can't say nothing. There's no debate.

**Mr. Miller:** Yes, I agree.

**The Chair:** Let me see what latitude I have. I have no latitude. I get that at home a lot too.

So if we move on to page 17, a PC motion: Those in favour? Those opposed? That motion loses.



Moving on to page 18, a government motion: Those in favour? Those opposed? That motion is carried.

Moving on to page 19, a government motion: Those in favour? Those opposed? That motion is carried.

An NDP motion on page 20: Those in favour? Those opposed? That motion loses.

Page 21, a government motion: Those in favour? Those opposed? That motion is carried.

Shall section 11, as amended, carry? Those in favour? Those opposed? That is carried.

Moving on to section 12, a government motion on page 22: Shall that motion carry? Opposed? That is carried.

Shall section 12, as amended, carry? Opposed? That is carried.

On sections 13 and 14 there are no amendments. Shall sections 13 and 14 carry? They are both carried.

Moving on to section 15, a government motion on page 23: Shall that motion carry? Those opposed? That is carried.

Shall section 15, as amended, carry? Those in favour? Those opposed? It's carried.

Section 16, page 24, a government motion: Shall it carry? Those opposed? That's carried.

Page 25, a government motion: Those in favour? Those opposed? That is carried.

Shall section 16, as amended, carry? Those opposed? That's carried.

Section 17, a PC motion on page 26: Those in favour? Those opposed? That motion loses.

A government motion on page 27: Those in favour? Those opposed? That motion is carried.

Moving on to page 28, a government motion: Those in favour? Those opposed? That motion is carried.

A PC motion on page 29: Those in favour? Those opposed? That motion loses.

A government motion on page 30: Those in favour? Those opposed? That motion is carried.

Shall section 17, as amended, carry? Those in favour? Those opposed? That motion is carried.

Moving on to section 18, page 31, there's a government amendment. Those in favour? Those opposed? That motion is carried.

Page 32, a government amendment: Those in favour? Those opposed? That's carried.

A government amendment on page 33: Those in favour? Those opposed? That is carried.

A government motion on page 34: Those in favour? Those opposed? That motion is carried.

A government motion on page 35: Those in favour? Those opposed? That motion is carried.

A government amendment on page 36: Those in favour? Those opposed? That motion is carried.

A government amendment on page 37: Those in favour? Those opposed? That motion is carried.

A government amendment on page 38: Those in favour? Those opposed? That motion is carried.

Shall section 18, as amended, carry? Those in favour? Those opposed? Section 18, as amended, is carried.

Moving on to section 19, on page 39 there's a government amendment. Those in favour? Those opposed? That motion is carried.

Shall section 19, as amended, carry? Those opposed? That is carried.

Moving on to section 20, on page 40 there's a government amendment. Those in favour? Those opposed? That is carried.

Shall section 20, as amended, carry? Those in favour? Those opposed? That's carried.

Sections 21 and 22: There are no amendments. Shall sections 21 and 22 carry? Those in favour? Those opposed? Sections 21 and 22 are carried.

Section 23: There's a government amendment on page 41. Those in favour? Those opposed? That is carried.

Shall section 23, as amended, carry? Those in favour? Those opposed? That is carried.

Moving on to sections 24 and 25, there are no amendments. Shall sections 24 and 25 carry? Those in favour? Those opposed? They are carried.

Section 26: There's a government amendment on page 42. Those in favour? Those opposed? That is carried.

Shall section 22, as amended, carry? Those in favour? Those opposed?

*Interjection.*

**The Chair:** Oh, did I say 22? Sorry. Shall section 26, as amended, carry? Carried. Thank you. At least I know everybody's paying attention.

Shall section 27 carry? Carried.

Section 28: There's a government amendment on page 43. Those in favour? Those opposed? That is carried.

Shall section 28, as amended, carry? Those opposed? That's carried.

Sections 29 to 32: There are no amendments. Shall sections 29 to 32 carry? Those in favour? Those opposed? Sections 29 to 32 are carried.

Moving on to section 33: There's a government amendment on page 44. Those in favour? Those opposed? That is carried.

Shall section 33, as amended, then carry? Those in favour? Those opposed? That is carried.

Sections 34 to 43: There are no amendments before us. Shall those sections carry? Those opposed? They are carried.

Moving on to section 43.1 on page 45: There's a government amendment. Those in favour? Those opposed? That is carried.

Shall section 43.1 carry? Those opposed? That is carried.

Sections 44 and 45: no amendments. Shall sections 44 and 45 carry? Those in favour? Those opposed? They are carried.

For section 46, there's a PC amendment on page 46.

1710

**Mr. Miller:** Can I have a recorded vote at this stage of the game?

**The Chair:** I believe you can, yes. It has to be deferred until the end, but we will have a recorded vote.

Moving on to page 47, those in favour? Those opposed? That is carried.



For section 47, there's a PC amendment on page 48.

**Mr. Miller:** I'd like to get a recorded vote on that.

**The Chair:** We'll have a recorded vote on that section, as well.

Page 49 is a PC motion.

**Mr. Miller:** Recorded vote.

**The Chair:** We'll have a recorded vote.

Pages 50 and 51.

**Mr. Miller:** Recorded votes.

**The Chair:** We'll have recorded votes.

We'll move on to sections 48 and 49. Those in favour? Those opposed? They are carried.

Moving on to section 50: There's a government amendment on page 52. Shall it carry? Those in favour? Those opposed? That is carried.

Shall section 50, as amended, carry? Those in favour? Those opposed? That's carried.

There are no amendments for sections 51, 52 and 53. Shall sections 51, 52 and 53 carry? Those in favour? Those opposed? They are carried.

Moving on to section 54: There's a government amendment on page 55. Shall it carry? Those opposed? That's carried.

There's a government amendment on page 53. Shall it carry? Those opposed? That's carried.

**Mr. Vic Dhillon (Brampton West–Mississauga):** What about 54?

**The Chair:** Page 54 is coming next. They needed to be dealt with out of order.

Page 54 is a government amendment. Those in favour? Those opposed? That's carried.

**Mr. Oraziotti:** Chair, there are no more opposition motions. I don't know if you want to—

**The Chair:** I'd love to, but I think we'd better just keep going as we're going, and we'll get to it.

Page 56 is a government amendment. Those in favour? Those opposed? That's carried.

Page 57 is another government amendment. Those in favour? Those opposed? That is carried.

Shall section 54, as amended, carry? Those in favour? It's carried.

For section 55, there's a government amendment on page 58. Those in favour? Those opposed? That is carried.

Page 59 is a government amendment. Those in favour? Those opposed? That's carried.

Shall section 55, as amended, carry? Those opposed? That's carried.

For section 56, there's a government amendment on page 60. Those in favour? Those opposed? That is carried.

Shall section 56, as amended, carry? Those opposed? That's carried.

For section 56.1, there's a government amendment on page 61. Shall it carry? Those in favour? Those opposed? That is carried.

Shall section 56.1 carry? Those in favour? Those opposed? Carried.

Shall section 57 carry? Carried.

Shall section 58 carry? Opposed? That's carried.

For section 59, there's a government motion on page 62. Shall it carry? Those opposed? That's carried.

Shall section 59, as amended, carry? Those in favour? Those opposed? That's carried.

Shall section 60 carry? Those in favour? Those opposed? That is carried.

For section 61, there's a government amendment on page 63. Those in favour? Those opposed? That is carried.

Shall section 61, as amended, carry? Those in favour? Those opposed? That is carried.

Section 62 is the short title. Shall section 62 carry?

**Mr. Ouellette:** Recorded vote.

**The Chair:** We'll deal with that later.

We've got some schedules to deal with now.

Shall schedule 1 carry? Those in favour? Those opposed? That is carried.

Shall schedule 2 carry? Those in favour? Those opposed? That is also carried.

Shall schedule 3 carry? Those in favour? Those opposed? That's carried.

Shall schedule 4 carry? Those in favour? Those opposed? That's carried.

Shall schedule 5 carry? Those in favour? Those opposed? That is also carried.

Shall the preamble carry? Those in favour? Those opposed? That's carried.

Let's go back and do the recorded votes that were requested. My notes have them starting on section 46.

**Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh):** Page 50.

**Mr. Oraziotti:** Yes, section 46.

**The Chair:** Section 46, page 46: a PC amendment. A recorded vote has been called for.

### Ayes

Miller, Ouellette.

### Nays

Brownell, Dhillon, Oraziotti, Racco, Rinaldi.

**The Chair:** That motion is lost.

Shall section 46, as amended, carry? Those opposed? That is carried.

Recorded votes were called for on all the amendments on section 47, beginning with the PC motion on page 48.

### Ayes

Miller, Ouellette.

### Nays

Brownell, Dhillon, Oraziotti, Racco, Rinaldi.

**The Chair:** That motion is lost.

Moving on to the PC amendment on page 49.

**Ayes**

Miller, Ouellette.

**Nays**

Brownell, Dhillon, Orazietti, Racco, Rinaldi.

**The Chair:** That motion is lost.  
Page 50, another amendment.

**Ayes**

Miller, Ouellette.

**Nays**

Brownell, Dhillon, Orazietti, Racco, Rinaldi.

**The Chair:** That loses.  
Page 51.

**Ayes**

Miller, Ouellette.

**Nays**

Brownell, Dhillon, Orazietti, Racco, Rinaldi.

**The Chair:** That also loses.  
Shall section 47 carry? Those in favour? Those opposed? That is carried.

Section 62: Mr. Ouellette asked for a recorded vote on the short title.

*Interjection.*

**The Chair:** Okay. Mr. Ouellette has asked for a recorded vote as to whether section 62 shall carry.

**Ayes**

Brownell, Dhillon, Miller, Orazietti, Ouellette, Racco, Rinaldi.

**The Chair:** Carried.

That's it for the recorded votes. Moving on to the title, shall the title of the bill carry?

**Mr. Ouellette:** A recorded vote.

**The Chair:** You want a recorded vote on the title of the bill.

**Ayes**

Brownell, Dhillon, Orazietti, Racco, Rinaldi.

**Nays**

Ouellette.

**The Chair:** That is carried.  
Shall Bill 184, as amended, carry?

**Mr. Ouellette:** A recorded vote.

**The Chair:** A recorded vote is called for.

**Ayes**

Brownell, Dhillon, Orazietti, Racco, Rinaldi.

**Nays**

Ouellette.

**The Chair:** Bill 184 is carried.

Shall I report the bill, as amended, to the House? Those in favour? Those opposed? That motion is carried.

Thank you very much for your attention.

*The committee adjourned at 1719.*









## CONTENTS

Wednesday 9 May 2007

**Endangered Species Act, 2007, Bill 184, *Mr. Ramsay* / **Loi de 2007**  
sur les espèces en voie de disparition, projet de loi 184, *M. Ramsay* ..... G-1147**

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### **Chair / Président**

Mr. Kevin Daniel Flynn (Oakville L)

#### **Vice-Chair / Vice-Président**

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)

Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)

Mr. Kevin Daniel Flynn (Oakville L)

Mr. Jerry J. Ouellette (Oshawa PC)

Mr. Mario G. Racco (Thornhill L)

Mr. Lou Rinaldi (Northumberland L)

Mr. Peter Tabuns (Toronto–Danforth ND)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### **Substitutions / Membres remplaçants**

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Mr. Norm Miller (Parry Sound–Muskoka PC)

Mr. David Oraziatti (Sault Ste. Marie L)

#### **Also taking part / Autres participants et participantes**

Ms. Alison MacKenzie, counsel, legal services branch,

Ms. Debbie Ramsay, manager, species at risk legislative review,

Ministry of Natural Resources

#### **Clerk / Greffière**

Ms. Susan Sourial

#### **Staff / Personnel**

Mr. Doug Beecroft, legislative counsel

16  
13



G-49

G-49

ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 14 May 2007

# Journal des débats (Hansard)

Lundi 14 mai 2007

**Standing committee on  
general government**

**Comité permanent des  
affaires gouvernementales**

Education Amendment Act  
(Progressive Discipline  
and School Safety), 2007

Loi de 2007 modifiant  
la loi sur l'éducation  
(discipline progressive  
et sécurité dans les écoles)

Chair: Kevin Daniel Flynn  
Clerk: Susan Sourial

Président : Kevin Daniel Flynn  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 14 May 2007

Lundi 14 mai 2007

*The committee met at 1603 in room 151.*

## SUBCOMMITTEE REPORT

**The Chair (Mr. Kevin Daniel Flynn):** We'll call to order, then. This is a meeting of the standing committee on general government. We're here today to hear from four public delegations on the matter of Bill 212, An Act to amend the Education Act in respect of behaviour, discipline and safety.

Prior to that, we need a motion to deal with the standing committee. Would somebody like to move that? Mr. Rinaldi?

**Mr. Lou Rinaldi (Northumberland):** Summary of decisions made at the subcommittee on committee business:

Your subcommittee on committee business met on Thursday, May 10, 2007, to consider the method of proceeding on Bill 212, An Act to amend the Education Act in respect of behaviour, discipline and safety, and recommends the following:

(1) That the committee hold public hearings at Queen's Park on Monday, May 14, 2007, and Wednesday, May 16, 2007, in the afternoon.

(2) That hearings be held on the morning of Wednesday, May 16, 2007, if required.

(3) That the committee clerk, with the authority of the Chair, post information regarding the committee's business on the Ontario parliamentary channel and the committee's website, and send out a press release.

(4) That interested people who wish to be considered to make an oral presentation on Bill 212 on Monday, May 14, 2007, should contact the committee clerk by 5 p.m., Thursday, May 10, 2007.

(5) That interested people who wish to be considered to make an oral presentation on Bill 212 on Wednesday, May 16, 2007, should contact the committee clerk by 5 p.m., Friday, May 11, 2007.

(6) That on Thursday, May 10, 2007, and Friday, May 11, 2007, the committee clerk supply the subcommittee members with a list of requests to appear received. This list is to be sent to the subcommittee members electronically.

(7) That if all groups can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties.

(8) That, if required, each of the subcommittee members supply the committee clerk with a prioritized

list of the names of witnesses they would like to hear from by 10 a.m., Friday, May 10, 2007, and by 10 a.m., Monday, May 14, 2007, and that these witnesses must be selected from the original list distributed by the committee clerk to the subcommittee members.

9. That groups be offered 10 minutes in which to make a presentation.

10. That the research officer prepare an interim summary of the recommendations heard. This summary will be distributed on Friday, May 18, 2007.

11. That the deadline for written submissions be 12 noon, Friday, May 25, 2007.

12. That the deadline for filing amendments be Wednesday, May 23, 2007, 12 noon, as per the order of the House dated May 1, 2007.

13. That the committee hold one day of clause-by-clause consideration on Monday, May 28, 2007, as per the order of the House dated May 1, 2007.

14. That the committee clerk, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

That's the report of your subcommittee.

**The Chair:** Thank you, Mr. Rinaldi. Any speakers? Those in favour? That's adopted.

EDUCATION AMENDMENT ACT  
(PROGRESSIVE DISCIPLINE  
AND SCHOOL SAFETY), 2007LOI DE 2007 MODIFIANT  
LA LOI SUR L'ÉDUCATION  
(DISCIPLINE PROGRESSIVE  
ET SÉCURITÉ DANS LES ÉCOLES)

Consideration of Bill 212, An Act to amend the Education Act in respect of behaviour, discipline and safety / Projet de loi 212, Loi modifiant la Loi sur l'éducation en ce qui concerne le comportement, la discipline et la sécurité.

CANADIAN CIVIL LIBERTIES  
ASSOCIATION

**The Chair:** We can move on to our first delegation of the day, which is the Canadian Civil Liberties Asso-



ciation. Noa Mendelsohn Aviv is with us. If you'd like to come forward.

**Ms. Noa Mendelsohn Aviv:** Hi there.

**The Chair:** Welcome. Make yourself comfortable. You've got 10 minutes. You can use that any way you choose. If there's any time left at the end, we'll apportion that time between the parties proportionately.

**Ms. Mendelsohn Aviv:** Good afternoon, Mr. Chairman, members of the committee. As you know, I'm here from the Canadian Civil Liberties Association. What you may not know is that one of the fun things I get to do is spend many hours meeting with hundreds of students every year in their classrooms to discuss civil liberties, the Charter of Rights and Freedoms and the challenges of democracy. I have heard many students give their opinions about lots of issues, including the question we've come to speak to you about today, that of cyberspeech. It's not always easy to get the students, but once they get going, many of them have very interesting and intelligent things to say; a lot of fair comments as well.

The other group that I get to be in contact with a lot is teachers, and I have enormous admiration for them. They have the daunting task of trying to draw teenagers out of their complacency and apathy and try to help them become well-adjusted, engaged citizens in our vibrant democracy. This, after all, is one of the core functions of freedom of expression. But these educators also have a less fun task. They have to keep the schools working when students aren't always excited as much as they are about this project. Needless to say, this is a situation rife with tensions, and it requires educators to establish their authority, set boundaries and enforce these through discipline.

Section 306 of Bill 212 is trying to provide some assistance in this regard. Unfortunately, section 306 does not provide the necessary protections for certain basic rights and freedoms; in particular, freedom of expression and privacy of students. CCLA does not support an absolute right to freedom of expression. I want that to be clear off the top. Certain limits are fair and reasonable, as even the students will tell you, and certain unique limits may be applicable to a school situation, but Bill 212 doesn't get the balance right.

In a period of new technologies and new dilemmas around cyberspeech, semi-public Internet forums and schools reaching out beyond their borders into the homes of students, this bill has an important role to play. It should, first and foremost, be taking the lead in protecting students' rights and freedoms, their expression and their privacy. Where limits are appropriate—and we'll discuss those in a minute—it should be defining those limits. School boards and principals should know what kind of restrictions they may place and, more importantly, students need to know which of their personal and private off-school communications and activities could get them into trouble with their schools.

1610

Bill 212 only tells us that principals have a vague authority to suspend students for bullying, but it doesn't

tell us what bullying is. It tells us that principals can continue to suspend students for any offence so designated by a school board policy, but it sets no limits on what those policies may contain. Finally, and most significantly here, it extends the authority of schools to any other circumstance "where engaging in the activity will have an impact on the school climate." No explanations are offered, no definitions are provided and no protections are made for students' freedoms. This is worrying because, based on recent incidents, there is reason to believe that schools will interpret the term "bullying" to include many kinds of speech and cyber-speech. In fact, "cyberbullying" is the term that has been employed by school authorities in a number of recently reported cases.

In one of these cases a few months ago, according to news reports, a principal became rather unpopular when he enforced a board-wide policy against cellphones and iPods in the school. As you can imagine, the students were not very happy with this decision and, as you can probably also imagine, they started complaining and mouthing off to each other, as angry students have done against school authorities for decades, if not longer. What is new here is the forum they used, the semi-public website Facebook, which attracted the attention of some 300 students and that of the principal. According to media sources, at least 19 students were suspended for statements that were allegedly mean, derogatory or critical of the principal and the policy. Most significantly, there was one young woman who was suspended for the egregious offence of writing online to her friends and telling them that while she supported lifting the ban on electronic devices, she opposed the idea of starting a riot, something somebody else had suggested earlier.

While it's not clear from the news reports exactly why she was suspended, to the extent that students challenge a policy, shouldn't we be commending them for doing so? Isn't that the role we wish for members of a civic society? What is clear is that this bill does nothing to protect a person in such circumstances. Our concern is that the bill might be read as allowing school boards and principals to suspend for lawful, legitimate speech. The bill is very vague. It allows, if not invites, misuse.

"Bullying," for example: What does it mean? Who can be bullied? Principals, trustees? If a high school student sends you a letter, could this qualify as bullying members of this committee? For students to be suspended and have their records permanently marked, is there a standard of impertinence required? For example, what if students complain to a teacher that his test was unfair or what if, in a semi-public, by-invite-only forum, students complain that a teacher is mean, if she really is mean? Or what if they put together a petition to the principal protesting a new school dress code, something they do hate? Are these cases of bullying? How on earth are students supposed to know, and how else are they supposed to get their voices heard?

As for the "other circumstances where engaging in the activity will have impact on the school climate"—that's a



quote from the bill—what precisely are these other circumstances? I ask you: What couldn't have an impact on the school climate? Once again, the bill offers no explanation and the mind boggles at the possibilities, especially when the offences are vague and undefined, "bullying" and anything designated by a school policy. This could extend the disciplinary reach of the school to communications made between students in their own time from the privacy of their homes, where the only reason that school authorities would even know about these communications is because they've gone looking. As long as there is some potential impact on school climate, students could then always be under surveillance and in fear of being disciplined by the school when they're doing nothing more than arguing with friends, discussing the merits of their favourite movie stars or having a heated political debate.

Without anything more in the way of definitions, qualifications and safeguards, this could result in excessive restrictions on speech and will almost certainly, based on media reports, encourage an exaggerated self-censorship. Students want to get scholarships, references, awards and, certainly, admittance to universities. This bill, as it's currently drafted, is not only unfair; it runs the risk of being unconstitutional.

In order to amend the bill to protect these basic rights, it's important to work out a reasonable and coherent position on these issues, and we would ask the honourable members of this committee to consider the following:

(1) Charter rights, including freedom of expression and the right to privacy, do and should apply to youth and children. Certain limits may apply, in particular in the school context, but these limits need to be reasonable and they should be set out clearly so that students may know what is impermissible behaviour.

(2) The education of children to become fully engaged members of our democratic society requires that we give them room to practise the habits of democracy, including the exercise of their rights. They're a year away from voting.

(3) The goal of schools is to educate children, not to take on the role of parents or police in monitoring them in the other multi-faceted aspects of their lives.

In light of all of the above, CCLA would like to offer the committee several recommendations, which will be distributed to you in a minute. These will focus on the communications made by students in their own time and off school grounds against teachers, principals and other authorities.

(1) First and foremost, the protection of basic rights should not be left entirely in the hands of school administrators, however sincere or well-meaning they may be. As recent cases demonstrate, unfortunately some of them will get things wrong. The bill needs to remind school boards and principals of their constitutional obligations. The bill should provide explicitly for the right of students to freedom of expression and privacy.

(2) With regard to the right to privacy, the bill needs to clarify that school authorities may not intercept commun-

ications, and that if they do so, students shouldn't be subject to discipline for this. For example, if they have to make up a false identity to get onto a web group, students should not have to get into trouble for the communications that are inside that group.

(3) As discussed, we need to know what bullying means and what kind of speech is included.

(4) Bullying has always meant the targeting of vulnerable, powerless individuals. This term should not be used to refer to the targeting of principals, teachers and school authorities. A different term is needed for that kind of cyber-speech.

(5) Students expressing dissatisfaction with a school rule, objecting to a policy or trying to organize a protest should be commended by schools as effectively practising good citizenship. This is lawful, legitimate dissent. They should not be subject to school discipline, and the bill needs to say so.

(6) For communications about teachers, principals and the like, students should not be subject to discipline unless, at the very least, the speech is unlawful or unless the authorities in question are able to demonstrate that the expression significantly disrupts learning or school operations in a material or substantial way.

There are a couple more recommendations, but I'll leave them since time is running short.

I just would like to conclude with a thought based on my many hours spent with teenagers in their classrooms: There are a lot of jokers out there, and there are a lot of bright, committed, fair-minded kids. All of them, like us, are entitled to free speech and privacy. It's not earth-shattering news to anyone in the educational community that if we want young people to internalize certain values, we need to lead by example. We should be encouraging peaceful protest, not punishing it. We should be supporting rational debate, not stifling it. Unless these kids are causing real harm, we should be giving them their dignity and their freedom. This is their right, too.

**The Chair:** Thank you very much for coming today. That was excellent time management, but there's no time for questions, unfortunately.

#### ONTARIO TEACHERS' FEDERATION

**The Chair:** I'd ask our next delegation to approach the table: Rhonda Kimberley-Young, secretary-treasurer of the Ontario Teachers' Federation, and a colleague—

**Ms. Kathleen Devlin:** Kathleen Devlin.

**The Chair:** It's the same rules as for the previous delegation. You have 10 minutes to use in any way you see fit. If there is any time left over at the end, we'll try and share that as evenly as we can amongst the parties. Make yourself comfortable. The floor is all yours.

**Ms. Rhonda Kimberley-Young:** My name is Rhonda Kimberley-Young. I'm secretary-treasurer of OTF. I'm here today in place of our president, Hilda Watkins, who was unable to be with us.

The OTF does welcome the opportunity to provide the standing committee on general government with feed-



back on Bill 212, the Education Amendment Act (Progressive Discipline and School Safety).

The OTF, the Ontario Teachers' Federation, represents the professional interests of teachers employed in the publicly funded schools of Ontario. It is made up of AEFO, ETFO, OSSTF and OECTA, and therefore we have a membership of 155,000 teachers.

School safety is an issue of concern for each and every one of the teachers who are members of OTF. We want not only students, parents, teachers and other educational workers to be assured of a safe environment in which to teach and learn, but we also want all Ontarians to value our schools as safe and secure places.

The affiliates of OTF have done considerable work in looking at what will make our schools safer places to learn and to work, and in the last few years they have focused particularly on the impact that bullying can have on everyone in our schools.

1620

As with many issues, it's important that we strike a balance. In this case, we must find the balance between protecting the safety of students, teachers and other educational workers and addressing the root cause of student behaviours. While we recognize that the details of these amendments contained in Bill 212 will be further defined in regulation and address some of our questions, we do want to address the changes contained within the bill.

On suspension and expulsion: The teachers of Ontario have never supported teachers having the authority to suspend, nor principals having the authority to expel students. In fact, many of our affiliates have advised their teachers not to exercise this right. Therefore, we are generally in support of the proposals in Bill 212 to return the authority to suspend to principals and the authority to expel to school boards.

The concept of progressive discipline is one that is understood by the federation. The intention is to balance between changing inappropriate behaviour and applying consequences for that inappropriate behaviour. While we recognize that there needs to be a common-sense application of this idea, it's also important that it not become an excuse for school administration and management not to deal with significant safety issues in our schools. It will be important for the successful implementation of this concept to provide appropriate in-service for teachers and principals.

Teachers are pleased that the bill includes provisions for students to not only continue with their academic programs, but will also have access to treatment as needed. We have two issues we would like to raise concerning this part of the bill.

The first is that this commendable initiative needs to be appropriately funded. By that, we mean that it should not be funded from existing grants to school boards. Recognizing that this work is often quite expensive, the cost of providing the right funding is even greater.

The second issue we would raise is that, from our point of view, it's essential that these students continue to be taught by trained and certified professional teachers.

The bill gives the minister the authority to establish policies that would "impose different requirements on the provision of the programs for different circumstances." It's our position that such policies would ensure the qualification and certification of teachers.

We support the increased emphasis the bill puts on communication surrounding matters of suspension and expulsion. It's imperative that the student and the student's family understand their rights and responsibilities in such difficult circumstances. We also recognize that some of these changes are in response to certain findings of the Ontario Human Rights Commission.

We would like to emphasize that it's also important to include teachers in the communication. The level of communication is of greater importance to teachers at the point when students are being reintegrated from the special programs. This matter is one that has long been of concern to us, and we hope that the development of the regulation for this bill provides the government with an opportunity to address the subject.

In terms of mitigating factors, Bill 212 requires the principal to consider certain factors on making recommendations for expulsion. These factors are to be defined in regulation. We recognize the significance of this provision of the bill and the rationale for its inclusion. We do, however, expect that the federation will be consulted in the development of this regulation and consideration of its impact on the safety of our schools.

I do want to speak a little about bullying. As mentioned earlier, the federation is very concerned about bullying in our schools. We are pleased to see bullying included as an offence in these changes. The devastation that bullying can have on those who are being bullied is deep and can be far-reaching. We do have some questions that we would like to see addressed concerning bullying.

First, we hope that the changes will include all forms of bullying, including cyber-bullying, which, as we know from news reports, is increasing as technology advances. Secondly, it's important that the changes also include the bullying of teachers and other educational workers in the school as well as the bullying of students. Once again, committee members will be aware from news reports of the kinds of physical and psychological bullying to which teachers have sometimes been subjected.

Thirdly, in addition to the consequences outlined in the bill, we need to increase our prevention and intervention regarding bullying.

By way of summary, in general, OTF welcomes the introduction of Bill 212, the Education Amendment Act (Progressive Discipline and School Safety). In our view, it brings clarity, transparency and accountability to an issue of fundamental importance in our schools: confidence in our schools as safe and secure places to teach and learn.

We support giving principals the authority to suspend and school boards the authority to expel. We believe that progressive discipline must be appropriately applied and in-serviced. We agree that suspended and expelled stu-



dents should be in alternative programs provided by certified teachers and that the programs should be properly funded. We look forward to improvements in communication among all stakeholders in the area of school safety. We expect to be consulted on the development of the regulation of mitigating factors. We want to see a broad definition of bullying in the regulation and would offer our help in the development of this regulation. Certainly, three of the four Ontario affiliates have done considerable research in the area of bullying, and we would be most happy, through OTF and the affiliates, to offer our help and support.

We really do welcome the opportunity to address the committee on this important piece of legislation, and as I said, we would be very happy to continue to consult as the regulations are developed. Thank you.

**The Chair:** Thank you very much. You've left time for a brief question from each of the parties. Unfortunately, that's under a minute each, starting with Mr. Ouellette.

**Mr. Jerry J. Ouellette (Oshawa):** Thank you very much for your presentation. There are a number of questions. Hopefully, somebody else will be able to jump in on them. I think the one I'd like allude to is, you don't mention anything about the appeal process. Once somebody has been suspended, there is an appeal process. Do you think that the student should be allowed to continue on in school while the appeal process is going on or should they be exempt from school when that process is going on? There's no real clarity on that issue in the bill.

**Ms. Kimberley-Young:** I think that in terms of the appeal process, a lot of what's going to need to happen—the principals are obviously going to be given the ability to deal with the suspensions directly. I would expect that, given the nature of the behaviour in the first place, that might be a factor that's considered in terms of that appeal process.

**The Chair:** Thank you. Mr. Marchese?

**Mr. Rosario Marchese (Trinity-Spadina):** Two quick questions. This bill will not be enacted until 2008. Given the urgency of the issue, I thought they would have made sure this bill got dealt with immediately. I wonder whether you have an opinion on that.

You talk about having to deal with prevention and intervention, but you just leave it there. Do you have any comments about that as well?

**Ms. Kimberley-Young:** All of the research that the federations did on bullying speaks to the importance of intervention and prevention and the kinds of programs and supports that are needed in schools for students who are showing behaviours that are unacceptable. A student who has been a victim of bullying needs help and support, but the student who's perpetrating the bullying obviously needs assistance as well. It's an area where we do believe there need to be adequate resources to make sure those things happen. It is the root cause of the behaviour that needs to be addressed, and we would like to see a focus on intervention and prevention. I think that's been a consistent message that has come from the affiliates and OTF.

**The Chair:** Thank you. Ms. Sandals?

**Mrs. Liz Sandals (Guelph-Wellington):** Thank you for your presentation. You mentioned the issue of communication, particularly when a student is returning from a long-term suspension or expulsion. That was an issue which the action team got into as well. What sort of communication would you like to see at the point of students being reintegrated into the classroom?

**Ms. Kimberley-Young:** I think the key communication needs to happen between the school, a principal and the teachers with whom that student will be placed. That could be multiple teachers, obviously, in a secondary setting. Having been a classroom teacher, the more one knows about the student and the more one is able to intervene and help with the behaviour strategies and so on that might be very important for that student to continue in, the better. That communication needs to be very clear and immediate with the teacher, so that they understand what that student's experiences have been and what might be part of a team approach to changing those behaviours as a student goes forward.

**The Chair:** Thank you very much for coming today. It certainly is appreciated.

1630

#### GEORGE PASICH

**The Chair:** We move on now to our third delegation of the day: Mr. George Pasich. The floor is yours, sir. You have 10 minutes. If there's any time left over after the presentation, we'll share the time.

**Mr. George Pasich:** My name is George Pasich. I have a son who has had the pleasure of having a safe school journey since October 2005, and that's why I'm here.

I'll just get right down to the key points:

—The Ministry of Education is in the business of education, not the business of administering justice.

—The constitutional right to an education should be protected, as should the right to be presumed innocent.

—The Toronto District School Board should be held accountable for its actions.

—Bill 212 requires changes before becoming law.

The Ministry of Education has a mandate to provide education to our youth and not to establish a secondary justice system for youth in school. The method of punishment used—the denial of education—is unconstitutional and self-defeating. The procedures for doling out punishment relegate youth to second-class status. The constitutional right to be presumed innocent is ignored. School boards, with the help of the growing cottage industry of education law professionals, are finding more ways to trample youth rights. Besides frustration, the only recourse for parents to get a fair shake is judicial review, a process out of reach for most parents.

For over four years, school boards have trampled the rights of youth in a deliberate and systematic way. The Ministry of Education, instead of leading a path to reform, has supported the school boards. In some cases,



the ministry has relied on school boards to provide the legal rationale to continue along the path that they are on. I ask you: What does the Ontario Human Rights Commission think of this path? Where is the leadership?

Current problems: The Education Act refers to transgressions occurring on school premises. This boundary is routinely exceeded, and the only recourse for parents is an expensive judicial review if they stumble across this information. I did not. The principal decides this jurisdictional issue with the answering of a simple question: If off school property, how is this related to the school? What a fair and unbiased piece of crock.

A local school board, as a matter of policy, routinely upgrades a principal-limited expulsion to a board expulsion, thus avoiding costly board expulsion hearings and an independent review by the Child and Family Services Review Board. Not only is the youth expelled from his school, but he is not allowed to go to any other schools in the board. This violates his constitutional right to education and contravenes the Education Act and the Statutory Powers Procedure Act. The limited expulsion hearings did not have a defined time limit. Thus any board can schedule a hearing after the expulsion is over, thereby reducing the likelihood of an appeal or making it a moot point.

Most principals do not have any training in investigation procedures and, as they are present in day-to-day situations, cannot be deemed unbiased. Trustees are not trained to be judges, yet they sit in hearings and make judgments on complex legal issues.

Bill 212: Off school property is not enough. Now, we are going to allow a principal, well-versed in the constitutional rights of youth, to determine what the definition of "climate" is. I'm sorry; that is my mistake. That is the domain of educational law professionals who work for the school boards.

Timeline on suspensions will mean that any suspensions under three weeks will be served before an appeal occurs. Since there is no timeline on a principal's investigation, a suspension can be fully served before an appeal is scheduled.

Board expulsion hearings: On one side, you have a trustee with in-depth knowledge of legal proceedings advised by the school board counsel. You then have the principal, advised by outside counsel with expertise in education law, and possibly an agent. I almost forgot: They also work on a family's budget.

On the other side you have the parent with outstanding expertise in constitutional law, administrative law and education law. Education law is important, because even if you have the money to hire a lawyer, the ones with education law expertise all work for school boards.

Solutions: a real public inquiry where instead of spoon-fed questions and answers, we could hear the real horror stories; a constitutional review of the Education Act and its amendments so that there is no doubt about anybody's rights being violated. A consultation with the Ministry of the Attorney General should take place so that a review of the overlapping jurisdictions occurs.

Accountability of school boards must be resolved. It is most disturbing that the Ontario Human Rights Commission has to monitor the activities of the school boards and their overseer, the Ministry of Education. Obviously, the Toronto District School Board continuously drags its feet with reform and transparency. This falls on its leadership and its accountability to no one. This must change.

A recent Senate report documents how we are failing to live up to international obligations with respect to our human rights. If we cannot respect the rights of our youth, shame on us.

In conclusion, the Ministry of Education is in the business of education and not the business of administering justice. The constitutional right to an education should be protected, as should the right to be presumed innocent. The Toronto District School Board should be held accountable for its actions. And Bill 212 requires changes before becoming law.

**The Chair:** Thank you, Mr. Pasich. You've left about a minute and a half for each of the parties, starting with Mr. Marchese.

**Mr. Marchese:** Mr. Pasich, for many years we've known from the Human Rights Commission that there are a disproportionate number of kids who get expelled and/or suspended, and they happen to be kids with a special education need and/or children of colour. For years we were saying to the government, "We've got to provide programs for these kids. Clearly, there are some issues, problems: some of them social, mental illness possibly, some of them related to family problems that come into the school. We as a system should be trying to help rather than kicking them out." For years they didn't listen, and finally they brought a bill that I believe addresses a lot of the concerns that I raised. It doesn't go as far as I would in terms of our need to have other people who help them, but at least it moves in that direction. Are you saying that even this now is just not adequate, or what?

**Mr. Pasich:** Over the last four years, they have been ignoring constitutional law. Regulation 37/01 says that a board expulsion must be heard by the Child and Family Services Review Board. The Toronto District School Board routinely upgrades a principal's limited expulsion into a board expulsion, appendix B. They put in a line that says that generally during the term of the expulsion, the student would not be eligible to transfer to another district school board, Toronto district school board. They avoid the board expulsion hearings and they also avoid the independent review of the Child and Family Services Review Board. I am the first one in four years. We have a date, June 13, to see what happens. I'm at the Child and Family Services Review Board for the first time.

**The Chair:** There's time for one short—

**Mr. Marchese:** That's okay, thank you.

**The Chair:** Mrs. Sandals.

**Mrs. Sandals:** Perhaps this follows along on the same issue. You're talking about the issue of the limited expulsion versus a full expulsion, which exists in the



current legislation. In Bill 212, there is no such thing as a limited expulsion. There is only the full expulsion, which means that any family that has an expelled student would have access on appeal to the Child and Family Services Review Board. So in Bill 212, if I'm understanding your complaint correctly, there is no such thing as a limited expulsion precisely because of some of the problems that you're describing. Were you aware that Bill 212 would get rid of that?

**Mr. Pasich:** Yes, but you still have the problems of the principal deciding whether it is a school offence or a non-school offence. Once the principal decides that it's a school offence, it gets rubber-stamped all the way down the line, and here I am 18 months later: I've written you a letter and a bunch of other people a letter, and nobody wants to talk to me about it.

**Mrs. Sandals:** The appropriate process under Bill 212 is that the principal will make a recommendation to the board, the board will hold a hearing, and if you wish to appeal, then you would automatically have access to the tribunal.

**Mr. Pasich:** But they can still trample on your rights, and the only way a parent can do anything about it is by going to get a judicial review, which is a couple of thousand dollars.

**The Chair:** Thank you, Mr. Pasich. Mr. Ouellette.

**Mr. Ouellette:** Wouldn't that section in the bill that states that the appeal has to be heard within five days—  
1640

**Mr. Ouellette:** Wouldn't that section in the bill that states that the appeal has to be heard within five days—

**Mr. Pasich:** Here we go. So you get suspended on a Monday. The principal sits there, takes a couple of days, writes you a letter. You get the letter six days later. You have to respond within five days. That's two weeks down the road. Now the principal can take 10 days to set the appeal hearing. Three weeks have gone, no appeal. You've already served your punishment.

**Mr. Ouellette:** Is that what you're seeing in the bill now?

**Mr. Pasich:** For both the suspension and the suspension in front of an appeal. So if you look at the timelines of both of those things, you can serve a three-week suspension easily without getting to your appeal.

**Mr. Ouellette:** So then my question to the previous presenter regarding the appeal process: Do you think that an individual should be allowed to attend the school while undergoing appeal?

**Mr. Pasich:** I think they should do something that they do in hockey. You know how they have parents who get mad at coaches? They have a cooling-off period. Before a suspension is handed out, maybe you have a cooling-off period. And you know what? If the kid is going to get punished anyway, what's the difference if he got punished on a Tuesday or the following Wednesday?

**The Chair:** Mr. Pasich, thank you very much for coming today.

## COUNCIL OF ONTARIO DIRECTORS OF EDUCATION

### ONTARIO PUBLIC SUPERVISORY OFFICIALS' ASSOCIATION

**The Chair:** We'll move on to our last delegation of the day. It's the Council of Ontario Directors of Education: Mr. Jim Grieve. If you would introduce—

**Mr. Jim Grieve:** Mr. Chair, I'd like to introduce Jane Mason, who is a superintendent in the Peel District School Board. We're going to jointly present the materials on behalf of OPSOA as well as CODE, public. I should remind you that this is not full CODE; it is the 32 public boards that are represented on this presentation.

So if I may, we're going to Frick and Frack a little bit on our presentation.

**The Chair:** As long as you can do it under 10 minutes.

**Mr. Grieve:** Can do. I'm going, yes.

On behalf of my colleagues with OPSOA and with the council of directors, public, I'm pleased to provide your standing committee with comments and recommendations that I hope will add clarity to elements of Bill 212 and which we hope will significantly improve the ability of boards to properly implement and operate within the new elements of the Education Act.

Consistent with the input you're likely to receive if you hear from the Ontario Public School Boards' Association, my colleagues are supportive of the general intent proposed in the changes in Bill 212. As chief education officers and supervisory officials in Ontario, we are dedicated to helping each child grow, feel valued and find success in our schools every day. The general intentions of the bill to articulate the positive impact of progressive discipline and integrate strong concepts of social justice in dealing with matters of school safety are strong pillars, frankly, on which to refine sections of the Education Act.

The general intentions of Bill 212 are clear but there are, we think, significant issues related to the implementation of the bill and a number of areas of the legislation that are unclear and, frankly, problematic. The following comments outline the concerns that we have.

First, the implementation issue: The proposed proclamation date that we've understood is actually July 2007. If that's not the case, then I would stand corrected. But if it is July 2007, then Bill 212 would require that all boards and all schools implement revised policies and procedures by September 4, 2007. This July to August 31 time frame is completely inadequate, and I'm going to give you some of those reasons. By the way, this is the Peel District School Board's set of policies and procedures related to safe schools, and to revise that in two months would be problematic.

First, developing, approving and communicating board policy and operating procedures can't be accomplished in those two months. Boards don't have the capacity, let alone the time, to develop or train principals, vice-principals, supervisory officers and trustees prior to



September 4. Without approved policies in place, boards can't provide clear communication to parents and students in time for the beginning of classes, and you've heard how important it is that we be crystal clear with parents and students.

Most schools in the province have already sent their school agenda planners to the printers. You may not think this a big deal, but this is an essential tool for organizing students. They're critical planning tools for students that all include significant elements of the code of conduct and character education. The documents have to be printed, and they have to be printed in time for September 4—well in advance of September 4. Printing the agenda planners with outdated information or with no content related to behavioural expectations would be ill-advised.

The strict discipline programs remain in effect until February 1, 2008. Any requirement for boards to implement the new elements of Bill 212 prior to that date would result in quite a bit of confusion, we think, in dealing with student suspensions, expulsions, hearings and appeals.

So our first recommendation—we've been bold enough to present you with some recommendations—would be to provide an implementation period from proclamation, if it's July 2007, to February 1, 2008. This will present an opportunity for elements of the bill to come into effect in the same time frame that the bill proposes for the introduction of programs for suspended and expelled students. That's February 1. In addition, it would give time for staff on a number of boards to collaborate on the development of sensible policies and procedures that could flow from these.

The second area is the sustainability of Bill 212 provisions. Boards require lead time in order to develop, select staff and find suitable locations. In some cases—I would cite the case of the Peel District School Board—we will have to find leased space in order to host programs for suspended and expelled students. Boards require guidance on the nature of these programs and significant clarity from the ministry as to the funding available to establish such programs before they can proceed with the planning. Clearly, a February 2008 time frame would benefit both the ministry and the boards in this process.

Our recommendation: Prior to the implementation of February 1, 2008, provide comprehensive details regarding the scope and nature of programs for suspended and expelled students, and outline for each board the funding that will flow to support PD—program development—staffing, program set-up and location costs.

I'm going to ask Jane to speak to the next couple of items.

**Ms. Jane Mason:** With respect to some areas of Bill 212 that we would see as problematic and/or unclear, the first section I'd like to speak to is that of section 309, appeal of suspension. This section outlines the expectation that all suspensions ranging from one or more classes to 20 days will be subject to appeal. By insisting

that all such discipline be treated as a suspension, the bill is actually moving elements of progressive discipline such as time-out from a class into the realm of formal and documented suspension. The removal of a student from one class or part of the timetable of a regular day can be a highly effective, informal, key discipline strategy. Requiring each time-out to be classified as a suspension will place a huge and unnecessary administrative burden on the administration and staff of the school. As well, if all such time-out periods are subject to appeal, the process could lead to an unreasonable and unnecessary load for board trustees and staff that would see the appeal process collapse under its own volume.

Our third recommendation, therefore, is that in-school suspensions of one day or less should remain, as per the current legislation, exempt from the out-of-school suspension process.

The second area we would like to highlight is with respect to subsection 309(4), hearing of appeal. The bill proposes that all suspensions will be subject to an appeal process. That process has a requirement that a hearing and determination of the appeal be held within 10 days. This short time frame will be an extraordinary burden for trustees and school administration. The lead time required to schedule the hearing, prepare and present the supporting materials and ensure that all parties are fully informed before the hearing is unreasonable.

Recommendation 4 therefore is to revise Bill 212 to require that all appeals of suspensions be heard within 20 days.

**Mr. Grieve:** In the next section, subsection 309(4), regarding hearing of appeals and the trustee panel, given the potential volume to be heard under Bill 212, it will be an extraordinary challenge to put together a panel of three trustees to hear each appeal. Almost without exception, an obligation to select up to a quarter of the members of the board to find time to serve on an appeal committee, within a very tight time frame—many of these trustees hold external employment—may not be workable, and the hearing simply may be dismissed for lack of quorum.

Our recommendation is that the bill be revised in some fashion to place a minimum requirement of at least one trustee, with no maximum. Many boards have an entire board that hears such hearings.

**Ms. Mason:** Next, subsection 309(4) deals with the hearing of an appeal, and I'd like to speak to the suspension appeal hearing following an expulsion hearing. In the proposed legislation, it is required that if the board does not expel a student, the suspension imposed prior to the hearing must be reconsidered by the principal. If the suspension is not withdrawn, it can then be appealed. This would require another hearing—a suspension appeal—to be held after the board has already conducted an expulsion hearing regarding the same fact circumstances. Perhaps the board could deal with an appeal of the suspension immediately following the expulsion hearing and hear all matters relating to the incident at a single proceeding.

Recommendation number 6 suggests revising Bill 212 to permit boards, after denying an expulsion, to immediately confirm or revise the suspension and immediately hear an appeal of the suspension, if requested by the parent.

**Mr. Grieve:** The committee has heard loud and clear from two previous presenters on the issue of bullying. Bill 212 includes bullying as one of the reasons for possible suspension of a student. This is an area of behaviour that is extremely complicated and which continues to be a significant focus of school staff—you've heard the federations and unions—boards and parents. To simply use the word "bullying" as a potential cause for consideration of suspension is to assume that there is a common understanding of the meaning of the word. School staff, parents and students deserve a much more clear explanation of what constitutes the range of

bullying for purposes of this section of the act. It's not appropriate to leave the definition of this cause for suspension up to appeals committees or tribunals.

Our recommendation: Bill 212 really needs to include much greater clarity of what constitutes bullying for the purposes of this section of the act.

Mr. Chair, we'll end on that note and thank you very much for your consideration of our recommendations.

**The Chair:** Thank you, sir. Excellent time management: You used just about 10 minutes right on. Unfortunately, there is no time for questions, but thank you very much for attending today.

Thanks to all the delegations that have appeared before us.

This committee is adjourned. We'll be meeting again at 4 o'clock, May 16, in this room.

*The committee adjourned at 1653.*



## CONTENTS

Monday 14 May 2007

<b>Subcommittee report</b> .....	G-1163
<b>Education Amendment Act (Progressive Discipline and School Safety), 2007, Bill 212, Ms. Wynne / Loi de 2007 modifiant la Loi sur l'éducation (discipline progressive et sécurité dans les écoles), projet de loi 212, M<sup>me</sup> Wynne</b> .....	G-1163
Canadian Civil Liberties Association .....	G-1163
Ms. Noa Mendelsohn Aviv	
Ontario Teachers' Federation .....	G-1165
Ms. Rhonda Kimberley-Young	
Mr. George Pasich.....	G-1167
Council of Ontario Directors of Education; Ontario Public Supervisory Officials' Association.....	G-1169
Mr. Jim Grieve	
Ms. Jane Mason	

## STANDING COMMITTEE ON GENERAL GOVERNMENT

### Chair / Président

Mr. Kevin Daniel Flynn (Oakville L)

### Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)

Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)

Mr. Kevin Daniel Flynn (Oakville L)

Mr. Jerry J. Ouellette (Oshawa PC)

Mr. Mario G. Racco (Thornhill L)

Mr. Lou Rinaldi (Northumberland L)

Mr. Peter Tabuns (Toronto–Danforth ND)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

### Substitutions / Membres remplaçants

Mr. Frank Klees (Oak Ridges PC)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mrs. Liz Sandals (Guelph–Wellington L)

### Clerk / Greffière

Ms. Susan Sourial

### Staff / Personnel

Mr. Larry Johnston, research officer,  
Research and Information Services

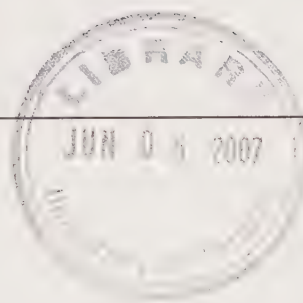
16  
-23

G-50



G-50

ISSN 1180-5218



**Legislative Assembly  
of Ontario**  
Second Session, 38<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**  
Deuxième session, 38<sup>e</sup> législature

## **Official Report of Debates (Hansard)**

**Wednesday 16 May 2007**

## **Journal des débats (Hansard)**

**Mercredi 16 mai 2007**

**Standing committee on  
general government**

**Comité permanent des  
affaires gouvernementales**

**Education Amendment Act  
(Progressive Discipline  
and School Safety), 2007**

**Loi de 2007 modifiant  
la Loi sur l'éducation  
(discipline progressive  
et sécurité dans les écoles)**

Chair: Kevin Daniel Flynn  
Clerk: Susan Sourial

Président : Kevin Daniel Flynn  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 16 May 2007

Mercredi 16 mai 2007

*The committee met at 1619 in room 151.*EDUCATION AMENDMENT ACT  
(PROGRESSIVE DISCIPLINE  
AND SCHOOL SAFETY), 2007LOI DE 2007 MODIFIANT  
LA LOI SUR L'ÉDUCATION  
(DISCIPLINE PROGRESSIVE  
ET SÉCURITÉ DANS LES ÉCOLES)

Consideration of Bill 212, An Act to amend the Education Act in respect of behaviour, discipline and safety / Projet de loi 212, Loi modifiant la Loi sur l'éducation en ce qui concerne le comportement, la discipline et la sécurité.

**The Chair (Mr. Kevin Daniel Flynn):** I'll call the committee to order. This is the second day of hearings on Bill 212, An Act to amend the Education Act in respect of behaviour, discipline and safety.

ONTARIO ENGLISH CATHOLIC  
TEACHERS' ASSOCIATION

**The Chair:** Our first presenters today are Donna Marie Kennedy and Victoria Hunt from OECTA, the Ontario English Catholic Teachers' Association. Come forward and make yourselves comfortable. Each delegation has been granted 10 minutes; you can use that time as you see fit. If there is some time left over at the end of the presentation, we will share it amongst the three parties equally. The floor is all yours.

**Ms. Donna Marie Kennedy:** Our submission is before you, so I'm not going to read it, but I do have some comments that I would like to make to the panel.

First of all, we're very pleased with the government's recognition of bullying as a factor. This association, along with OSSTF and ETFO, is calling to survey teachers in Ontario, and we know that bullying is a serious and prevalent problem for teachers and students in this province.

We do need to be consulted on cyber-bullying, in particular. We are concerned that there was a recent meeting with 50 students about the issue of cyber-bullying, and while we can appreciate that that's important, it's very important that the professionals who are dealing with this problem on a daily basis be consulted.

On average, our office receives at least five calls a week on this topic of cyber-bullying. I thought it was important for you to hear an example of the cyber-bullying that occurs on a regular basis across this province. I'm going to read to you from a page from Facebook. I will not use the language there and I will insert "expletive deleted" because of Hansard. These are students talking: "She talks about her daughter way too"—expletive deleted—"much and it really"—something—"me off. She talks about her"—expletive deleted—"Inuit daughter. Ha. Pretty soon her husband will leave her for another man. If I was that"—expletive deleted—"I would turn gay too." In two sentences, we have racist, sexist and homophobic remarks that are on the Internet and have gone across this province and, quite frankly, could have gone around this world. This is a serious issue for teachers and for students. The really sad part about this case is this particular student was not disciplined. There was no suspension. The person was allowed to stay in the school.

This not only happens to teachers but it happens to students in our schools. Can you imagine the devastating effect these kinds of comments have on our students? So cyber-bullying is a serious, serious issue and we need to deal with it as a school system and as a government.

We understand the principles behind progressive discipline and the need to recognize mitigating factors. However, teachers and students need to know that there will be appropriate consequences for inappropriate actions. The application of mitigating factors should not be an excuse to do nothing. OECTA requests that we be consulted in the development of the regulations surrounding mitigating factors.

We also have a concern that our principals receive in-service. How are they going to know what the rules will be for these mitigating factors? It is important that everyone know what these rules are.

We need to monitor the discipline and to keep teachers aware of decisions that are made at the school level. It's not good enough to send a student down to the principal's office and to have that student returned to the classroom without some kind of record-keeping, without some kind of notice of what discipline has occurred. There needs to be supports not only for the teacher and for that student, but we need to know what the consequences are for actions.

We need to know what the definitions are of the mitigating factors. They cannot be left up in the air. Teachers



need to have input into the development of those regulations.

While progressive discipline is a lofty ideal, in reality it only works if there are sufficient support services within the system: child and youth care workers, psychologists, social workers, guidance counsellors. All of these services were severely cut in the last decade. Progressive discipline will not work unless the students' behaviours and needs are being addressed. If a student is not suspended and is only to be sent back to the classroom, then the problems have not been addressed. There is no point in having a program in place without some kind of consequence, without some kind of follow-up. It sends a message that anything goes. This is not what we want. We need to be assured that appropriate actions are being initiated immediately and what the consequences will be.

Lastly, do not forget that our classroom teachers are already overloaded. We oppose any attempt by the government to download discipline onto the classroom teacher. It's not fair to the other students in the classroom; it's not fair to the teacher. It's an impossible expectation for the teachers to handle all the discipline in the classrooms. It needs to be handled at the principal's office.

Finally, funding will have to be provided if these programs are to be successful.

I leave it open for questions.

**The Chair:** Thank you very much, Ms. Kennedy. You've left about three minutes, so there's time for a question from each party, starting with Mr. Klees.

**Mr. Frank Klees (Oak Ridges):** Thank you very much for your submission. I'm interested in the fact that you've zeroed in on this issue of progressive discipline and the lack of a definition for it, really. I know we'll hear from the principals' council as well, later. They share your concern.

On the one hand, the government here, through this bill, is trying to send a signal that they're kinder and gentler, that there's a better way to deal with discipline. Yet what I'm hearing from you is that what you don't want to lose are the consequences of bad behaviour. Can I ask this: What is your sense of the direction that the government is taking this legislation in? Are they losing a sense of the responsibility to empower teachers, to have the necessary authority that is rightfully theirs in the classroom? Is that balance being tipped by the direction of this legislation if we don't get the appropriate amendments in place?

**The Chair:** It would have to be a very, very short answer.

**Ms. Kennedy:** Well, it was a very, very long question. I think the issue is this: We never, as an association, wanted the power to suspend students. What we are saying is we understand what progressive discipline is, but there has to be a record of that. That's our frustration. We don't believe that the zero tolerance policy worked either, quite frankly, because there was, again, not a concise record-keeping process to find out what the proper discipline was. We're being asked to be consulted

on the regulations. I think it's clear that we need to define those—we need to define what mitigating circumstances are—and those do need to be outlined and clearly stated.

**The Chair:** Thank you, Ms. Kennedy.

**Mr. Rosario Marchese (Trinity-Spadina):** Just a couple of quick statements: I agree with cyber-bullying being included as an offence—I do—and I also believe that when comments are made outside of the school, it's as if they're made inside the school. What is printed on a little computer or BlackBerry or whatever stays for a long time, travels far and wide, and it has serious, hurtful implications. People are looking for guidelines and I agree with that, but generally, I have a sense of where we're going with this.

Your point, which I agree with, about the need for child care workers and guidance counsellors—because that's the question I wanted to ask you, and you included that. Our point is, unless you bring back those youth counsellors, the youth workers and supports like social workers—if we don't bring them back to help kids who are troubled and in need, it's going to be very difficult for teachers to be able to say, "Here they are back in the classroom. What do I do?" So your point that I agree with is, "We need these extra workers."

**Ms. Kennedy:** I think we're also saying that we need guidance counsellors in elementary schools. Bullying doesn't start in high school; bullying starts in the elementary school. That's where we need additional resources as well.

**Mr. Marchese:** Absolutely. I agree with that.

**The Chair:** Thank you, Mr. Marchese. Thank you, Ms. Kennedy. Mrs. Sandals?

**Mrs. Liz Sandals (Guelph-Wellington):** Yes, just to note for the record, the mitigating factors will be clearly defined in regulation, and the intent would be to have a PPM around progressive discipline to clarify the policy guideline.

My colleague Mr. Levac has a question.

**Mr. Dave Levac (Brant):** Thanks very much for your presentation. As an educator for 25 years, and part of that as a principal, I definitely appreciate the evolution of what discipline means and that we don't need to have handcuffs on us. I appreciate the fact that you've acknowledged that and the fact that we are uploading some of those things that you said were not a problem.

Thank you for mentioning that we did meet with students. I do accept that as a kind comment, which means that if we need to hear exactly what's happening on the inside of those kids' minds, we need to talk to them as well. I moderated that, and I can tell you that there were very positive things said about their teachers and the people who supported them. They do understand that they will be part of the solution as opposed to part of the problem. I encourage us to use them as well.

I appreciate your comment that you need to be spoken to as well. That will happen.

**Ms. Kennedy:** Thank you. I don't disagree with your comments. My concern is that those comments that I read from Facebook were from good students.



**Mr. Levac:** Absolutely.

**The Chair:** Thank you very much for attending today. Thank you for your presentation.

#### ONTARIO PRINCIPALS' COUNCIL

**The Chair:** Moving on now to the Ontario Principals' Council—Peggy Sweeney?

*Interjection.*

**The Chair:** Peggy, you've changed. Peggy, Laura and Karl. If you would each identify yourselves for Hansard; you've got 10 minutes. You can use that any way you like. At the end, we'll share the time remaining among the parties. The floor is yours.

**Ms. Laura Hodgins:** Good afternoon. My name is Laura Hodgins and I'm the vice-president of the Ontario Principals' Council. Joining me today are Karl Sprogis, another executive member and chair of the Toronto School Administrators' Association, and Sarah Colman, our general counsel.

In light of our limited time here today, we have prepared a more detailed backgrounder with our main concerns and proposed revisions to the bill. We will leave that with all members of the committee, but we will touch on a few of the items at this time.

1630

The Ontario Principals' Council is the professional association representing 5,000 principals and vice-principals in Ontario's publicly funded school system. We are concerned that this bill may change the way student discipline is applied in schools, impacting detrimentally on student safety by undermining the leadership and responsibility of school principals.

We've identified several areas of concern that require amendment before this bill is passed. Specifically, these areas are:

—the re-characterization of progressive discipline techniques used by teachers and principals, previously called detentions, to in-school suspensions. Detentions should not be subject to the same provisions as more serious infractions such as assault, vandalism or the possession of alcohol or drugs. Schools should maintain the ability to deal with less serious infractions informally, rather than formalizing the consequence by calling it a suspension;

—the inclusion of these in-school suspensions on a student's Ontario student record. Some school boards have adopted a policy of recording every suspension on a student's OSR. This new practice would unfairly include relatively minor issues on a student's permanent record;

—the lack of available supervision for in-school suspensions. Under the proposed legislation, suspensions of one or more classes must be served in school. Unfortunately, most schools simply do not have enough teachers or other suitably trained adults to carry out the required supervision. As a result, principals may refrain from assigning any in-school suspensions. Disciplinary issues would go unaddressed, sending the wrong message to students about their behaviour and the lack of appro-

priate consequences, or suspensions would be assigned for one day or more to be served at home, resulting in students spending more time out of school and away from their learning environment;

—the omission of formal suspension reviews by supervisory officers. These formal reviews often addressed the concerns of parents and eliminated the need for appeals. Held at the school, they also reduce the amount of time that a principal has to be away from the school;

—the ability to formally appeal every suspension, including those of one or more classes and those of one day. Last year, close to 50% of the suspensions assigned in the Toronto District School Board were for one day. There are no data available on the number of detentions, now called in-school suspensions, and therefore no ability to predict accurately how many appeals might be generated due to these. Allowing all of these suspensions to be appealed could literally grind the system to a halt or, more concerning, discourage principals from suspending at all. That would weaken the entire disciplinary process in a school, completely undermining the safe environment that this bill purports to support. We also share the concern expressed by CODE, OPSOA and OPSBA that the timeline for suspension appeals is too short and that convening three trustees to hear appeals will be problematic, especially in small boards with large geographical boundaries;

—the duplicative appeal process. Two hearings for the same incident is unnecessary and a waste of resources. The panel of trustees considering the evidence and hearing the arguments related to expulsion should have the jurisdiction to make a final decision about suspension as well;

—the lack of a comprehensive definition of bullying. It is imperative that this definition be clearly defined so that students and parents understand what does and does not constitute bullying;

—the focus on the rights of the individual versus the rights of the whole school. The list of mitigating factors that principals and trustees must consider before imposing suspensions or expulsions will be significantly expanded. While we support the concept of considering mitigating factors, individual rights should not override the rights and safety of all others in the school;

—the exacerbation of the administrative burden currently faced by principals. Under Bill 212, there will be a significant increase in administrative work due to the increased number of suspensions and the appeal process. Principals will be spending their time on management, as opposed to instructional leadership. This goes directly against a clearly stated priority of this government: to revise the role of the principal to that of an instructional leader. While we acknowledge that the process around suspensions, expulsions and appeals should be fair to all parties and be thorough and transparent, these additional administrative requirements have the potential to add tremendously to the workload of schools, taking away from our primary role of educating kids;



—alternative education programs. In our view, if a student needs to successfully complete an alternate education program prior to re-admission, then that program should be identified as mandatory. It is also imperative that funding be provided to transport students to and from these alternative programs.

While Ontario's public school principals and vice-principals support schools that are safe, we are concerned that the result of this legislation will erode the ability of school leaders to appropriately apply discipline at the school level. For schools to be effective learning communities, the needs of all students must be taken into consideration.

We encourage this committee to carefully consider the recommendations we have made, which we believe will improve this important piece of legislation.

**The Chair:** Thank you very much. You've left enough time for each party for one brief question and answer, starting with Mr. Marchese.

**Mr. Marchese:** I have many questions, but the quick one is on point 9: "Principals will be spending their time on management, as opposed to instructional leadership." I understand this, but in the past, thousands of students were being expelled—black students, mostly, and students who had a disability. It was a serious problem. We've been trying to say to the government that we need to change this. This is obviously an attempt by the government to finally address that. If we don't do that, what do you recommend?

**Ms. Hodgins:** Our concern is more with the broadened definition of what a suspension is. It's now the removal of a student from one or more classes, and if that's the case, then we need to look at suspensions and the paperwork that goes with them. That's where the administrative burden would be added. So that is really the concern.

**The Chair:** Thank you, Ms. Sweeney.  
Ms. Sandals.

**Mrs. Sandals:** I'm actually a little bit surprised by the interpretation that all removal from class is automatically labelled a suspension. In my read of what the act says, if a principal decides to impose a suspension, it could include a partial day suspension, not that any removal from class or detention must be a suspension. I'm wondering if you could point us to how you get that read.

**Mr. Karl Sprogis:** I think where it says "one or two classes." In a regular school day there are four classes. If you remove a student for a half day, two periods, parents want to know the legitimate reasons for doing that. So you have to account for where that student was. If they're not in class, where are they? They need to be in a formal setting, and that would be the formal, in-school suspension, if the definition of progressive discipline is rather limited. I think we've been doing detentions, but this problem has existed all along. When you take that student out of the class, what is that really? Is that not a suspension?

We feel that this proposed legislation formalizes what has been happening in schools, and we're concerned

about how we would account for the removal of that student for one, two—maybe the whole day.

**The Chair:** Mr. Klees.

**Mr. Klees:** We heard from OECTA just previously that they really don't want teachers involved in discipline in the classroom, that that's a job for principals. What I'm seeing here is that you are suggesting that, based on all the new responsibilities, it's going to be impossible for principals to actually carry out this responsibility. How do you see the squeeze coming together?

**Mr. Sprogis:** That's part of the responsibilities of a teacher. If progressive discipline is going to be a major feature of this new legislation, that's what progressive discipline is all about. As misbehaviours begin to occur, they need to be dealt with as soon as possible and corrective measures, proactive measures, need to take place. That needs to start in the classroom.

**Mr. Klees:** How do we square that off, then? If this legislation puts progressive discipline at the forefront, how can we accommodate the request of the teachers to relieve them of that responsibility?

**Mr. Sprogis:** Well, my position is and would be that that is part of their responsibility. It has to start. The students know the teacher best; the teacher knows the students best. That's where those corrective measures can begin. By the time a student is sent to the office, things have become very serious and it's very difficult to go backwards. That's why we're referring to it as progressive discipline. This was a debate I had with the members of the Human Rights Commission in November 2005. We dealt with this measure, and that was one of their recommendations. There was great debate about how this would happen. It also comes down to what is happening in that classroom.

**The Chair:** Thank you very much for attending today. My apologies, Ms. Hodgins; I've called you Ms. Sweeney throughout the presentation.

**Ms. Hodgins:** Thank you.

1640

## ELEMENTARY TEACHERS' FEDERATION OF ONTARIO

**The Chair:** Our next presenters are from the Elementary Teachers' Federation of Ontario, ETFO, Vivian McCaffrey and Gene Lewis, if you'd like to come forward. Make yourselves comfortable. Thank you very much for attending today. You've got 10 minutes to use as you see fit. If there's any time remaining, we will share that time among the parties. The floor is yours.

**Mr. Gene Lewis:** Thank you very much for the opportunity to appear before you today. The Elementary Teachers' Federation of Ontario represents 70,000 teachers in the public elementary schools of Ontario.

I think one of the components that we'd like to underline is that schools should be safe places for all, and "all" includes students and staff who work in the schools. The safety of both the students and the staff of the schools is affected by the behaviour of the students, the parents and



the school administrators. We're certainly looking for safe places for our members and for the students they teach.

The Safe Schools Act, 2000, introduced by the previous government was a rather simplistic approach to some complex issues. While it was aimed at removing troubled students from school, it did very little to actually address the cause of their behaviour problems. In fact, the Ontario Human Rights Commission has found that in some cases it was actually discriminating against racialized students and students with disabilities. The legislation also was introduced in an environment of funding cuts. I think it was recognition that it's easier to ignore problems than to fix them. It's much cheaper to ask the student to step out of the school than it is to provide the resources to support that student to have an effective education. The strict discipline approach, as it was labelled, was just another impact of funding cuts on the public education system. Suspending the student is much cheaper than supporting the student to take advantage of the education system.

We do support the components of Bill 212 that restore a more progressive approach to student discipline to the system. We think it's important to have a framework, however, to deal with the most severe infractions that may occur during a student's time at school. We support the fact that this new bill adds bullying to the list of student behaviours that are subject to possible suspension. It's important. We've seen a lot of media reports lately about cyber-bullying and the impact that has both on students and staff. I think people overlook the impact it has on the parents that are involved, as well. We believe that, one, there should be a definition of bullying in the bill and it should include cyber-bullying. Part of that definition should address the issue of defamation of teachers on the Internet, which has become increasingly important, at least in the media, but it's certainly an issue that all of our members are dealing with in their day-to-day lives.

I think discipline is an issue. The members of the committee need to recognize that it's an issue not just for secondary students, but for elementary students as well. Our members are increasingly reporting incidents of bullying. We did a survey a short while ago in cooperation with OECTA, as was mentioned earlier. At some point in their career, 55% of the teachers in the public and Catholic systems have been bullied either by someone in a superior position, a parent, a guardian or a student. So bullying is something that one out of two teachers can look forward to during the extent of their career. We recommend in the recommendations that Bill 212 include a definition of bullying that encompasses cyber-bullying.

With respect to suspensions, as was said by our colleagues, we never did support the concept that teachers should be suspending students. We think that's a role for the school administration. Teachers do have a role in student discipline. Certainly classroom management is key to effective instruction, so there is a disciplinary

component to that, but when it comes down to suspensions and expulsions, those are in the domain of the administrators in the school.

With respect to the programs for suspended and expelled students, when I was a principal I think the program was they'd sit in my office for the day, or sometimes a longer period. That was a reflection in some part of a lack of sophistication of the times, but also a lack of recognition of the long-term impact that bullying has on the students involved, both the aggressor and the child being bullied. We certainly need resources. I mean, it's pretty easy to write in legislation that we'll have students in a special program, but for the teachers and for the principals in the school, it's much more difficult to put into practice, and it certainly requires significant resources and support.

The legislation, as it is now, is not specific as to who would be providing these programs for suspended and expelled students. We think there should be some degree of formality to that, and the instructional programs should be offered by qualified teachers.

With respect to the Ontario student record, a somewhat different position than our colleagues before us: We think there are cases where records of violent incidents should be included in the Ontario student record folder. We don't think that's happening consistently across the province now, based on the information we receive from our members, and the failure to include violent incident reports in the Ontario student record card puts our members in jeopardy potentially, and other students in jeopardy as well. Our members need to be aware if a student has violent tendencies to protect the students they teach, but also to protect their own right to refuse work that's unsafe under the Occupational Health and Safety Act.

**The Chair:** You have about a minute left, sir.

**Mr. Lewis:** Well, in that minute, I'll just make the point that funding is critical. We support progressive discipline. It requires early identification, it requires re-introduction into the schools of behaviour counsellors, psychologists, audiologists, all of those student supports that were eliminated by the funding cuts of a prior government.

I think the key point is that adequate funding is critical. Students and teachers need the protection in the schools, the support of adequate legislation; principals need the courage to act; and school boards need to be in a position to support all three—the students, the teachers and the principals.

**The Chair:** Thank you, Mr. Lewis. We appreciate your presentation today. Unfortunately, there's no time for questions. We do have your written submission.

#### JUSTICE FOR CHILDREN AND YOUTH

**The Chair:** We move on now to the next delegation, which is Martha Mackinnon, executive director of Justice for Children and Youth. Ms. Mackinnon, please make yourself comfortable. You have 10 minutes. You can use



that any way you see fit. Any time left over we'll share amongst the parties.

**Ms. Martha Mackinnon:** Thank you very much. First, I'd like to thank you very much for the opportunity to appear before you today. Like the people who have preceded me, I'm not going to read my submissions. You have them in writing. They flesh out some of the points in more detail that I wish to make orally.

1650

The first thing I really wanted to say is, the stimulus for my being really happy to be here is that when what is often called the Safe Schools Act of the former regime was introduced, the number of expulsions in Ontario increased by more than tenfold. It was dramatic. It has remained nearly that high ever since—a slight decrease in 2005. But an enormously larger number of students are not in school and many more have been dropping out as a result of the academic falling behind that happens when they miss so much school. So from that perspective and from the perspective of an executive director of a legal clinic which represents young people—low-income young people—across Ontario, Bill 212 is a very welcome improvement.

I also want to just add personally that I am not only the executive director of a legal clinic who works with young people, I'm a former teacher and a former in-house counsel to a school board. So the issues that are addressed in this legislation are ones that I've seen in the course of my career from all kinds of perspectives.

The first thing—and I think this was perhaps a response or a comment on something that Mr. Klees has suggested—is that it's not a question of whether discipline is harsh or soft. It's a question of whether it's effective. I think that's the first thing that's important in assessing legislation.

The second thing is that it must be fair. So often, whether someone wins or loses an appeal, the part that helps to restore their relationship with the school is whether or not the process felt fair to them. Bill 212 makes some suggestions in that direction. There are a few other suggestions that we have that are set out in our submission. At the end of the day, the largest frustration that we hear from parents and from students is that they are frustrated by their lack of ability to question the evidence before the principal.

The third thing that's essential to student discipline, in our submission, is that there must be standing in the process for the young person who is affected. It's a requirement of the United Nations Convention on the Rights of the Child, which Ontario has happily accepted. It's the convention that stands for human rights for young people around the world, with every single country in the world signing it and ratifying it except the United States; and Canada was a proponent of it. Children are required to have the right to participate in the processes that affect them. While Bill 212 gives increased rights to 16- and 17-year-olds who have left home, I can assure you that I have represented people who have not left home whose views are quite different from their parents, who say, "I

don't want to appeal. We want to go to Florida. We're not going to tie ourselves up in order to do an appeal." In my submission, there just isn't any way that you can justify not allowing a student to decide whether to appeal or not and to have standing at an expulsion hearing.

The fourth point is timeliness. The safe schools legislation did in fact try to increase the turnaround time on expulsion hearings and appeals, and that was good. As we all know, time moves at a different pace for young people and they have moved on in a different way, and we need to move fairly quickly if our responses are supposed to be effective. Bill 212 makes it even more timely, and that's a good thing. My only comment here is, it's going to be a long and frustrating wait until February 2008 for students who face discipline in the short time that remains of this school year and all of first semester in the fall.

The fifth point—and here I am more critical of the legislation—is that it fails to address two responses that schools are also using to effect discipline without having to go through any process. The first is exclusions. Students who are excluded under section 305 of the Education Act can be excluded without any right of appeal or any due process. Some school boards use an exclusion following a suspension. So they have already determined that a student's conduct does not warrant expulsion and yet, when the suspension is up, they are permanently excluded from their home school. There is such a case before the Divisional Court at the moment. A different approach has been that some schools simply do what they call an administrative transfer. That is to say, they just say to a student, "You can't come back here. We've moved you to another school." While that may be useful at times, repeated transfers are very destructive both for the social development of a child and also for their academic progress. It happens not because of the actions of school boards, but to kids who are in the care of children's aid societies regularly, and we have lots of literature showing how it damages their education. In my submission, Bill 212 should address, limit and specify in what circumstances exclusions and administrative transfers can be used.

My final oral point refers to something that others have addressed, which is the need for clarity around two of the new concepts in Bill 212. The first is the notion of discipline for affecting school climate and the second is bullying. My clinic represents both kids who do bullying and kids who are bullied. We represent kids who are afraid to come to school because they have special education needs. We've seen all sides of it, and therefore, in my submission, it's critically important that we manage to keep schools safe while recognizing the limits of schools and the fact that there is a zone of privacy for students, that there are places where they can just be themselves, and that they also, as does everyone else in Canada, have rights to free expression. So in my submission, we set out some more guidelines on those points, and I would say that more clarity is needed with respect to those two terms.



Those are my oral remarks.

**The Chair:** Thank you very much. You've left time for one very, very brief question from each party.

**Mrs. Sandals:** It was our intent to deal with the exclusion problem, so we will go back. I know exactly what you're talking about, and we'll have a look at that.

Your question around timing: One of the pushbacks that we've heard on the appeal issue is that if boards are only required to sit once a month, when you get into geographic challenges, rural and northern, can you actually require things to be held more quickly than people are legally required to convene, especially if we're saying that we need three people to sit? Do you have any comment on the geography versus expediency?

**The Chair:** It's going to have to be a brief comment.

**Ms. Mackinnon:** In my view, expedience can never actually yield to fairness. We're trying to teach kids the social, democratic and civil society values that we want them to have as adults, so we can't cut back on that. But there are electronic means of having hearings. Furthermore, it doesn't have to be a whole school board, it only has to be a committee of three, and I believe that we can, as we do now for bail hearings, have a version—where it's very hard to get together personally—of an actual hearing promptly.

**The Chair:** Mr. Yakubuski, a brief question.

**Mr. John Yakubuski (Renfrew-Nipissing-Pembroke):** Thank you for joining us today. I came in partway through the submission, but I was intrigued by your comments with regard to the right of appeal on the part of the student even if they're not a 16- or 17-year-old living outside the home. Are you suggesting that the right of a 13-year-old to appeal should trump the authority of their parents, if they're not looking for an appeal on a disciplinary situation at a school—that a 13-year-old should be able to overrule their parents?

**Ms. Mackinnon:** Two pieces out of that, as quickly as I can.

The first is, I don't think there's anything magic about 13 or 16 or 17. I think it's a capacity issue, the same way kids of whatever age can access health treatment. If they're capable of understanding and making a decision, then they should be granted standing. That's the first point.

The second thing is, I don't think it's a question of trumping anyone's rights. I think that a student should have a right to appeal and a parent should have a right to appeal, and if they make different decisions—

**Mr. Yakubuski:** If they differ, who makes the call?

**Ms. Mackinnon:** One of them appeals and the other does not. If you looked at it—you can't say to a kid, "We're going to try you in criminal court for assault, but we aren't going to let you come." How can you say to a child, "We're going to expel you for drug trafficking, but we won't let you show up and give your side"?

**The Chair:** Mr. Marchese.

**Mr. Marchese:** Two quick comments: I agree with you on the timeliness. We said that the implementation should happen faster and not wait until 2008, so I agree

with you on that. And there was some suggestion that you'd have one trustee to hold the hearing. I'm not in favour of that, because one trustee could present a problem, based on his or her view. What is your sense of that?

1700

**Ms. Mackinnon:** Our actual experience of that has been deeply disappointing. For one thing, they don't get enough training, and there are lots of reasons that the consistency of decisions made by single trustees would not be there. Secondly, if I were going to be more candid, I have seen trustees say, "What do you mean, kids don't like it? You're a basketball player. All kids like basketball players." It's just not a very sophisticated process, and I think you need the checks and balances of more than one trustee.

**The Chair:** Thank you, and that's the end of your presentation. Thank you very much for coming today. It was appreciated.

**Ms. Mackinnon:** Thank you for the opportunity.

#### ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

**The Chair:** If we can move on to the next presentation of the day, the Ontario Public School Boards' Association: Rick Johnson, president; David Walpole, director of program policy; and Jennifer Trépanier, legal counsel. Please come forward, and make yourselves comfortable. You have 10 minutes, like everybody else, to use as you see fit. Any time left over will be apportioned between the three parties. The floor is all yours.

**Mr. Rick Johnson:** I'd like to thank you for the opportunity to address you this afternoon. OPSBA represents the interests of 31 public school boards across all regions of Ontario that are responsible for the education of over 1.3 million elementary and secondary school pupils.

Bill 212 issues in the proposed changes to the Education Act and the implementation of the revised requirements of school boards as a result of the passage of Bill 212.

Let me begin by saying that OPSBA is supportive of the shift in the underlying philosophy of maintaining student discipline. Bill 212 signals a change from that of a zero tolerance model to that of a model based on progressive discipline within a framework which identifies the activities for which a student may be suspended or possibly expelled. It is encouraging to see the removal of terms such as "compulsory" and "mandatory" and a change to language that is less arbitrary and inflexible.

We would like to comment on Bill 212 in two ways. First, we would like to identify those requirements in the bill which have been brought to our attention by member boards as problematic and which do not, in our opinion, add to the effectiveness of maintaining school safety. Secondly, we would be pleased to offer some comments on the implementation of the requirements of the pro-



posed legislation, which we understand is scheduled for passage in early July 2007.

I'd like to pass it over to Dave Walpole, our director of policy and program.

**Mr. David Walpole:** Thanks very much. Glad to be here. I won't spend any time talking about the things that the other organizations have talked about, such as bullying. Those will be in our written submission, so you'll be able to read them, but we do share some concerns that it needs some clarification.

We have some concerns about the one-day-or-less suspension, in that it could be interpreted in ways that I suppose it wasn't meant to be interpreted. One of the things, quite frankly, that less-than-a-day suspensions are used for is what's commonly called "time outs," where children who are misbehaving are sequestered until they can get their acts together and come back to class with a better spirit. So we don't really want to complicate this in terms of making requirements and paperwork that may not be necessary.

We also note that there is the removal of a currently less formal suspension review process that exists, which is used quite commonly and actually does stem many of the requests for appeals before they are generated. Speaking of hearing appeals, the 10-day notice and having an appeal within that time will logistically cause difficulties. As you know, the requirement for a three-member board—for example, in Rainbow District School Board there are nine members on the board. That's a third of the board who would have to be present within a nine-day period. That could be a difficulty, and it needs to be recognized.

Other than the fact that parents may not consent to an extension of the 10-day limit, we suspect that further complications exist in here. One that needs to be looked at, we believe, is the appeal of the suspension prior to the expulsion hearing, which would in current proposals stand as a separate event, and it need not. In order to get this done in a fashion which would move things along for everybody's sake, it could be handled as an adjunct to the hearing for the expulsion once that part of the meeting's over.

So we suggest, really, that suspensions of one day or less be looked at. The time limit of 10 days would be unreasonable, we believe, in order for boards to adhere to that. The composition, we think, is a difficulty, requiring three; less might be okay, notwithstanding Martha's comments on basketball. And empower the committees to hear the suspension appeal following the expulsion hearing.

I want to get to mitigating circumstances, because that is a new component that is going to be brought into this—not that we dispute those, but we don't know about them. We believe there are some significant components that principals and board members are going to really have to understand in the use of these in order to make effective decisions at both hearings and appeals.

We also have a concern with the removal of regulation 474 as a tool which is used occasionally by principals to

deny access. We do know, of course, that it should not be abused and should not be used in circumstances where it's not warranted, but we have some concerns that it will simply disappear without a real discussion on that, and there are some reasons included in our proposal which would support that.

With respect to the implementation requirements, there are some things that we would have some concerns about. One is that the act and regs require boards to have policies and procedures in place. That's going to be very difficult, given the current timelines. We would suspect that this could go into a hurry-up offence in order to get these things done, but we don't see them being in place in September, and that could cause problems because now you've got an uneven set of implementation dates which will cause misunderstandings in the community in expectations for parents and students.

The issue of planners you've heard about from previous presenters.

Also, we would like to comment on the requirements of the ministry in terms of getting us ready in boards for the replacement programs for students who are expelled and suspended to replace the strict-discipline programs. We don't know anything about those, and we're going to need to know. That really is something that we'd have concern about in terms of the fall semester, where we're in that in-between phase. We think it would be a good idea to look at February 1 for a full implementation. That would allow school board staff to really get their heads around the required changes to make this, which we believe is a good act, work well and without hitches in the community.

**Ms. Jennifer Trépanier:** I just want to comment briefly. From my experience in dealing with the Safe Schools Act since it came out, we've been faced with so many challenges, and one of the major criticisms as a whole about the regime was its complexity and legalistic nature. I've been involved in a number of conflicts that have arisen in that regard.

Just to demonstrate this, I'm going to refer you—I won't go on further, but the two charts that we prepared at our firm in that respect show the expulsion process because that is, generally speaking, the most complex, and it demonstrates what the process looks like under the Safe Schools Act and under Bill 212. I think you'll see on its face as it is currently drafted that it's at least as complex as the current, but with some of the proposed changes that could change; it's been somewhat streamlined. In any event, we would hope that it becomes a little more simplified to avoid a little bit of the legalistic nature, which is really not appropriate for a school setting.

One other comment in respect of Ms. Sandals: I know you had raised the concern about what is the reading that concludes that a suspension becomes—that it is termed a suspension. Essentially, when a parent sees that any time limit has a right to be appealed, whatever you label it, that is going to be the parents requesting that, and I think that's where the interpretation stems from.



Thank you so much for the opportunity.

**The Chair:** Speaking of time limits, that was good time management. Your time is up. Thank you very much for being here today.

1710

#### ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

**The Chair:** Our next presenter is OSSTF: Mr. Coran, if you'd come forward. If you could identify yourself for Hansard, you've got 10 minutes, like everybody else. Any time left over will be shared amongst the parties.

**Mr. Ken Coran:** Thank you. Ken Coran, and I'm the president of the Ontario Secondary School Teachers' Federation. You have a six-page submission, which I will follow loosely, I guess would be the best way to describe it.

You can see on the first page that we do represent a very vast group of educational workers. Sometimes it's perceived that we only represent secondary school teachers, but, in fact, we do have 60,000 members and they are not just teachers; they are what we call support staff workers as well. There is a list of some of those people: child psychologists, attendance counsellors, educational assistants, child and youth workers and so on. These people work not only in the public system but also in the Catholic system, and also in elementary schools and even in the university setting as well. We're very vast in scope, and we have a number of interests, obviously.

We did work quite extensively on the safe schools action team. We do applaud the government for the recommendations. However, there are always some cautions. The cautions are, let's look at now developing the regulations, the policies and the implementation, because it's truly only through those processes that we can achieve the success that I think everyone in this room is hoping to achieve, which is ultimately the students' success, improving the graduation rate and reducing the dropout rate.

On that note, there are a couple of concerns. I did just come from an executive meeting where we discussed Bill 212 in an extensive format. We had some pretty healthy debate this morning regarding 212. These are some of the things that came forward. These are not actually included in the paper, but they're things that I think you should be aware of. We would all agree that—ultimately, do any of us want suspensions or expulsions? No, we don't. We would like the world to be a nice, quiet place where everyone could live together, work together and respect the law and authority, but that's not the case. However, we can be very proactive to try to achieve those things.

The only way you can be proactive is to provide the services that will provide those services. What we are seeing right now in a number of areas is, with funding problems, a lot of the personnel who would deliver the services to provide the proactive nature of this are being reduced. I could give you a couple of examples. Up in Marathon, at Marathon High School, there were previ-

ously 13 educational assistants. This isn't in the document. There were 13 educational assistants and that has now been reduced to three. Now, granted—has there been declining enrolment? Obviously, there has been, but the fact is, we are seeing that the number of suspensions has gone up as a result of this decline of people who are providing proactive services.

In the Windsor area, there were 10 child and youth workers cut. They worked with high-needs students in the grade 7-8 setting. As a result, we are seeing increased suspensions. Up in the Ottawa-Carleton area, a very recently released one, with the funding issues there and \$21 million in cuts, one of the cuts they are suggesting is that 21 EAs be let go. Once again, these are people who provide those services. Will those cuts be realized? That remains to be seen over the budget process. Those are things we see out there.

One of the other issues in the bill is that there are events where there shall be suspensions and there are events where you shall consider expulsions or suspensions. Being in the room for about 30 minutes now, I think all of those have been alluded to: the cyber-bullying and the bullying issue. We see there being a lot of onus on the principal now, and we agree with you that it should be the principal who delivers the discipline for suspensions and the board that does the expulsions. But will there be somewhat of a workload issue for the principals whereby they may consider not going through with all the steps? The mitigating factors are important because we want to make sure that justice is served. Will there be a reluctance in actually suspending people because of this increased workload issue for them and the whole appeal process? If that is the case, will we see suspensions actually going up or down—possibly going down? Will there be external pressures from the community and so on saying, "School X has a high suspension rate. What is the problem there?" Or will the principal say, "I'm not suspending as many people because that makes my record look bad." I think these are real issues that we should look at, and that's not in the paper.

We have had a number of situations that really did work. A few years ago, the government provided extra funding for pilot programs for some of these alternative education situations. They were effective. I think a lot of school boards would report to you that they were effective, and they worked. A lot of students' careers and lives were turned around with those alternative plans.

With funding cuts, those programs were cut. So I guess we would say, let's try to get more funding out there, because some students really don't fit into the normal classroom setting. They just don't, and their being in there is jeopardizing the safety and the education of others.

Let's deal with that issue properly: Let's put them in a setting, fund it and provide the services. By "services," I don't just mean a teacher; I mean the support staff that goes along with the teacher to deliver those services. We would be more than willing to work with the government



to show you some of these pilot programs that did work and worked very, very effectively.

I think the key to a lot of this is, we are educators. What we're trying to do, really, is improve student behaviour. So, will a one-day suspension or an expulsion, with whatever alternative program is provided, end there, and all of a sudden, the student is cured and goes back into the other setting? I think what we have to do is be careful that we provide the services for the re-entry as well, to make sure that we do monitor that student, to make sure that they don't re-commit whatever it was that they were alleged to have done. That's a very important aspect that quite possibly was forgotten. We're educators; we want to improve it. Improvement doesn't happen overnight. We have to provide those services to make sure we see that improvement we want to see.

Basically, there are a number of recommendations in the paper. Like many people who have presented, I'm sure they've mentioned the word "funding" 100 times. The reality is, to do something properly, we have to make sure that the people power is there and that the money is there to accompany it. There are a lot of good ideas out there. We just want to make it work. I heard Rosario say, "Let's do it quicker rather than later," and I heard David Walpole say, "Let's wait until February." Our recommendation would be that if we are providing these alternative programs, which we are strongly suggesting, let's make sure they're in place, because in that interim time period, some boards have access to alternative programs right now and other schools don't. Liz mentioned that northern boards and the small rural schools just don't have the people power or the finances to provide those services.

What we end up with is what most of us in this room, or some of us, maybe, were even in at one point: a detention room. Does a detention room actually provide the instruction and that whole gamut of services that are needed to say, "You have made a mistake; here's what you have to do to improve," or is it just basically a jail where somebody sits for a day, and really nothing comes of it unless they learn on their own?

**The Chair:** Ken, would you summarize?

**Mr. Coran:** Sure I can.

Congratulations to the government. I think it's a great step. We do agree with you. I think the discipline was being done in a disproportional manner and some groups were basically being disadvantaged, but I would like to see success in this. I think to see success in this, we really have to make sure that we do it wisely, with additional funding. I do think we're going to need additional people and the services to go along with it.

Sorry I was long-winded there.

**The Chair:** No, you weren't long-winded at all; you used your time well. Thank you very much for coming today.

**Mr. Coran:** No questions?

**The Chair:** There are probably tonnes of questions; there's no time for questions.

## AFRICAN CANADIAN LEGAL CLINIC

**The Chair:** Our 5 o'clock delegation is not coming today, so we move on to the African Canadian Legal Clinic, Marie Chen and Charlene Theodore.

Thank you very much for presenting today. You've got 10 minutes to use any way you see fit. Any time left over at the end will be shared amongst the three parties. If you'd identify yourself for Hansard, the floor is all yours.

**Ms. Marie Chen:** I'm Marie Chen, a staff lawyer at the African Canadian Legal Clinic. With me is Charlene Theodore, an articling student at our clinic.

For those of you who are not familiar with the African Canadian Legal Clinic, we're a test case litigation clinic focused on addressing anti-black discrimination. Through our case work and our African Canadian youth justice program, we have represented and helped numerous African-Canadian parents and students with safe schools matters on the ground, through the human rights system and in the courts. We have also been extensively involved in law reform in this area.

1720

Obviously, I'll be speaking from the African-Canadian perspective. This is a community that frankly has borne the brunt of the safe schools legislation. It's a community whose children are either seen as criminals, budding criminals, or unruly and violent. We haven't had time to prepare a written brief. We will be submitting it before the time limit. We received very short notice of these hearings, and I would like to express at the outset our concern with the short notice. There are many community groups out there who have worked long and hard on this issue that are not here. This is a piece of legislation that will impact on the African-Canadian community in a huge way, and you need to hear from them. I note that there are six school organizations here, teachers' organizations. That's more than half of the people who are appearing in front of you. I think that's quite disproportionate.

Obviously, there's no doubt that changes in the current act have been long-needed and that the African-Canadian community has, since its inception, fought for its repeal. But the question remains as to whether or not the changes in this bill will actually make a real difference for African-Canadian children and parents. Will it protect the rights of African-Canadian children to a quality education and to equal treatment, without discrimination? Will it ensure that African-Canadian children are treated fairly in the process? Unfortunately, we believe the answer to these questions is no.

The bill simply falls short; it doesn't go far enough. The changes that we see are inadequate to address current problems. What we needed was a wholesale review of the act; Bill 212 is far from that. We asked for an overhaul, for fundamental, substantive change, but we only got, in large part, cosmetic tinkering.

I will be dealing with some main problems that we have identified with the bill. Firstly, it's still premised on



a law-and-order agenda; it's still underpinned by the law-and-order agenda that was brought in by the Harris government; it still takes a punitive approach to discipline. It is not child-centred. It does not have the best interests of the child as its focus. It does not even out the vast power imbalances between parents and children and the school authorities. To put it another way, this bill is Harris lite.

The fundamental problem is that it does not prevent the disproportionate impact that we have seen this bill have on African-Canadian children. The bill will not prevent African-Canadian children from continuing to be the ones who will be disproportionately targeted, suspended and expelled. Let's not forget why these changes are being brought about in the first place. It is because of the concerns of the disparate impact of the act on African-Canadian children. The Ontario Human Rights Commission complaint was largely brought as a result of that. The Ontario Human Rights Commission had earlier noted the impact of the safe schools provisions in its racial profiling inquiry report. Minister Wynne herself, when she was a school trustee, publicly spoke to her own experience in seeing racialized children as being disciplined more than others. Nothing in this bill is going to change that.

The bill will not prevent African-Canadian children from being brought into the disciplinary process in the first place—from being more stigmatized than they already are. Much has been made of the changes to the bill, for example, regarding a fairer process and alternative programs for students who are suspended and expelled. But the issue is not only how we deal with children once they are in the discipline process, but why and how they're brought into the system in the first place. It is cold comfort to tell parents that the bill gives them a clearer idea of the process when they are already caught up in it.

Why will this bill not prevent disparate impact? It is mainly because there is no change in the grounds justifying suspension and expulsion. The grounds are exactly the same as in the current act. In our experience, these are the very grounds that led to African-Canadian children being suspended and expelled disproportionately. The catch-all ground of "any other activity" under board policy gives a lot of discretion to school authorities and is open to interpretation. This facilitates decisions based on stereotypes about African-Canadian children, stereotypes about criminality, troublemaking and about their credibility as well. Because of the broadness of this ground, it allows for discretion to be exercised in a discriminatory way against African-Canadian students.

In addition, the bill still allows for mandatory suspensions. As you know, mandatory discipline is in the current act. In our experience, this has meant that school authorities feel they're compelled to suspend or expel because it is mandated. If you have it, they will use it. This bill still allows schools to do that. In our experience, many African-Canadian children end up being suspended and expelled for trivial reasons without a fair inquiry into the full context surrounding the incident, and they are

more harshly treated. Often, after the fact, we would discover that racial harassment or bullying preceded the incident, which were ignored by school authorities, and yet when children react, they're punished. Often, rough-housing behaviour, seen as acceptable with other children, is interpreted as dangerous or violent in African-Canadian children. African-Canadian children were not protected and their side of the story either not believed or investigated sensitively or fully by school authorities.

A third problem with the bill is that it's silent in many important areas. Where are the progressive discipline provisions? I know it's in the title of the act, but on my reading of the bill, I can't find any specific reference to it. Also, what will the mitigating factors be? While this bill sets out that mitigating factors must be considered, we don't know what the regulations will look like. I note that mitigating factors are not new; they're contained in the current act, but this does not prevent disparate impact on African-Canadian children. Why are mitigating grounds not included in the legislation, especially if they're based on and reflect core human rights principles that should not be relegated into regulations? We believe that it's important to make it clear and up front, and there's not reason not to. It can always be supplemented by legislation or regulations later. It's easy. There's ready-made language available. Use the Ontario Human Rights Commission settlement, which the minister has agreed to.

A fourth problem is that there's not enough procedural protection or clarity in the bill. There are no minimum standards of fairness and a lot is still left to the board. We've seen problems of differing policies and procedures established by different boards with respect to fair process. Power imbalances are also not considered. School authorities usually have access to and are represented by legal counsel. Almost all African-Canadian parents are usually unrepresented; advocates and legal representation are sorely needed. However, resources are extremely scarce for African-Canadian parents and students, who are already disadvantaged. Legal aid coverage is extremely limited.

Another concern with the bill is the quality of the alternative programs. How do we guarantee that the standards of the alternative programs ensure that children are indeed getting a quality education? Alternative programs are not new; school boards already provide them. But there have been huge problems with qualities and standards. Will African-Canadian children simply be warehoused in these programs?

Although we believe that the bill needs to be overhauled, we do not think that this is likely to happen, but we're still recommending—and hopefully, you'll be adopting—specific recommendations to the bill to address the concerns we have identified. We are recommending what we believe are safeguards to prevent disparate impact on African-Canadian children—safeguards that, at minimum, need to be incorporated into the bill. First, an explicit prohibition of racial discrimination must be included, and we suggest language such as, "that



racial discrimination and racial profiling are prohibited in the application and exercise of the duties and powers under this part of the act.”

Also, a specific clause dealing with fairness and the best interests of the child should be included; for example, “that these provisions be exercised and applied in accordance with the principles of fairness and in the best interests of the child”; that the reference to mandatory suspensions be repealed; that the grounds upon which to suspend or expel must be related to actual safety issues; that the list of mitigating factors be incorporated into the body of the bill in accordance with the language of the Ontario Human Rights Commission settlement; that the principle of progressive discipline and the types of progressive discipline be included in the bill; that legal representation be available to parents and students at suspension appeals and expulsion hearings; and that additional funding be provided to Legal Aid Ontario, including community legal clinics—

**The Chair:** You have about 20 seconds left.

**Ms. Chen:** Thank you—that alternative programs for suspended or expelled students be staffed by certified instructors and that the content and quality of these programs are, at minimum, of equivalent standard as elementary and secondary school curriculums; and that monitoring and review be conducted annually on the impact of these provisions on racialized students and the quality of these alternative programs.

**The Chair:** Thank you very much. We appreciate your presentation today.

**Mr. Marchese:** I’m sorry, Mr. Chair. The submission is going to be given to us after; is that the point you made earlier?

**Mr. Yakabuski:** Will we get a copy of the written submission?

**Ms. Chen:** Yes, I will have a written brief. I believe we have until May 25. Like I said earlier, because of the shortness of notice, we weren’t able to prepare it.

**The Chair:** Thank you very much.

1730

#### LESA McDOUGALL

**The Chair:** We move on, then, to the next presentation, which appears will probably be the last presentation before the vote. We may be able to get two in. Lesa McDougall? Ms. McDougall, if you’d come forward, we have your presentation before us. You have 10 minutes and you may use that any way you like.

**Ms. Lesa McDougall:** Thank you. I am a parent of four students in the elementary education system in the Bluewater District School Board, which is a northern board, from Toronto’s perspective. We have a very small school of approximately 230 students. I am a former teacher. I taught at this school, I attended this school, I was the chair of the school advisory council in this school.

I am here because I have very serious concerns regarding student safety. I would like to thank you for

visiting the legislation and for using terminology like “progressive discipline” and “safe schools.” I am, overall, a supporter of the revisions to the ed act, which seek to regard discipline as progressive and recognize the importance of safety in schools. Given the climate of school violence in our society, these considerations are timely and necessary. I believe that changes ought to assist schools, school boards and the ministry in achieving safety and discipline.

However, I have grave concerns about the provisions that seem to be lacking from a parent’s perspective with regard to transparency and accountability in education. There seems to be, in a parent’s estimation, because I have been through the system now, a lack of governance from a parental perspective, and I will use this time to just give you a synopsis of what my own family has experienced.

From March 2006 through to April 2007, my son has been assaulted repeatedly by a child whose parents are on staff at the school that my child attends. When my child was first assaulted, he did not respond or retaliate; he turned the other cheek. The parent that meted out the discipline was the teacher involved. When I went to the school with concerns about the process, I was told that, had he been any other child, he would have been suspended. Like other presenters today, I do see suspensions and expulsions as punitive. We’ve never asked for those kinds of punitive measures to be in place. What we have asked for is a safe, uninterrupted education provided for all students, which should be afforded every student in the province.

The experience for our family escalated to the point where on March 20, 2007, our son was assaulted physically in front of an educational assistant. This had escalated from the point where the boy had waited in a darkened ballroom with a baseball bat, came out swinging, saying he was going to kill my son.

What ensued was a very thorough investigation, according to the principal involved. That thorough investigation meant that I was not afforded access to our principal for 56 hours after the assault. Three days after the assault there was a superintendent, I assumed, at a meeting with the principal, the teacher involved, my husband and myself—and we had asked our trustee to come. What was produced was a document entitled “Observations” of my son and this other student’s exchanges. I was suspect of the document in the beginning. I had had a history with this principal as chair of the council and I just asked what was the question had been posed to the students. I was told that they were only asked what they had observed between these two students. What was reflected in the observations did not reflect the question that she suggested had been posed, and I asked to see the notes. After several requests to see the notes, I was finally told that the meeting was over. I asked my trustee to stay in our stead, and what was produced subsequent to that, several hours later, was a document entitled “Revised Observations,” which included, then, nine of the assaults that this child had committed against my son,



three witnessed death threats involving a musical recorder, a chair, a baseball bat, a sharpened wooden stake, and the physical assault that had happened in front of an ed assistant.

When this document was produced to our family, I asked the board again to re-investigate. I was told in no uncertain terms on the day that I put the request in writing to the Bluewater District School Board that the case was closed; there would be no further discussion about what the recourse was. It was indicated to me that corrective measures were in place, none of which were visible to me as a parent. I was not asking for punitive measures. I was merely asking for the safety for all students.

We kept our son home for six days in hopes that the Bluewater District School Board would act. I contacted my trustees. I contacted another superintendent. I contacted the director of education for the Bluewater District School Board. I was consistently told that colleagues don't look over colleagues' work; that the issue was closed; that they believed that the measures were in place, which, by the way, were that my son being removed from the other child's line of sight would be adequate to protect my child, who had been threatened and who had been assaulted, in fact; and that I should be pleased with the provision of alternate school bells so that the children would play on opposite ends of the school field and the children would enter at different bells.

I was not content that that was providing the safety that my child needed nor the safety that the other children in the class needed, so I pursued my situation with the chair of the trustees, the chair of the board. I was told that these were dire concerns. They would investigate. That was the week of April 5. I've heard nothing back since. I contacted my member of provincial Parliament's office and Mr. Tory indicated I should contact the Ombudsman. The Ombudsman's office, to my knowledge now, has no jurisdiction over the Ministry of Education or the boards of education. I was told to go back to the board of education and try to dialogue with them, which I did. I was told again that a supervisory officer would not investigate another colleague's work, that there would be no further comment. I was denied access then to not only the principal but also to my classroom teacher.

On April 25 we removed my son. This boy continues to harass another child in my son's—he did get a suspension for assaulting another child. My son's perspective on that is, "It's okay to hit me." Apparently it's not okay to hit a CAS student, because the boy did get a suspension after that. This boy has assaulted another child subsequent to this. When I queried the board about it, they said it was not my concern any longer because I no longer had a student in grade 6.

Mr. Coran's comments about the administration's reluctance, by a principal, to act because of mitigating circumstances is in fact what I have encountered as a parent. As a teacher, I am appalled by the fact that there is no governance in education, apparently. I've gone right

to what I thought was the top. I worked through the channels I thought I could work through, and I've been told by the Ministry of Education that school boards are outside their jurisdiction. I have been told that school boards are duly constituted corporations that apparently are not governed. Although, when I read this act and I read the revisions indicated here, there is some provision for a minister to act, but when I contacted Ms. Wynne's office after she made comments about the overhaul of the Safe Schools Act and about the consistency of application, I was again told that I had been given their position and that was that school boards are outside their jurisdiction and that they are held to no account, apparently.

I told Mr. McGuinty's office that I was extremely concerned about the safety of a child in a school in Ontario today given what had happened at Virginia Tech, given the climate in our schools right now. I was told that I had already been given their position. When I asked again, "Do you mean you don't care about the fact that a child is not safe?" I was told that my recourse could be legal action. I was told that my recourse could be to talk to the trustees, whom I'd already talked to. So apparently I wait till the next election and hope that the trustees who have failed to act to provide safety for my children are voted out. In the interim, who provides safety for my child in a class in Ontario today?

Those are my concerns. I would hope that at some point there would be consultation with parents. I know that parents can't govern school boards. I'm talking about and suggesting that there needs to be sweeping changes to acts and laws so there is consistent application. Regardless of mitigating circumstances, safety of students is paramount and ought to be paramount.

Mr. Flynn, how many minutes do I have left?

**The Chair:** You're down to seconds, actually. It would be less than a minute, so if you'd summarize, that would be great.

**Ms. McDougall:** My summary is, to whom are school boards held to account? What is the governance of school boards and what happens if there are breaches and violations of the Safe Schools Act, for example? What recourse does a parent have when their child is consistently assaulted but their parents are in the system so they have an advocate? I have no advocate. Where do I go from here, short of taking legal action, which I'm not prepared to do at this point? The police are telling me to press charges against this 12-year-old boy. I'm not prepared to do that either. I trust the system to protect my children.

**The Chair:** Thank you, Ms. McDougall. We really do appreciate you appearing today.

1740

METRO TORONTO CHINESE AND  
SOUTHEAST ASIAN LEGAL CLINIC

**The Chair:** Moving on now to the Metro Toronto Chinese and Southeast Asian Legal Clinic, Avvy Go is



here, the clinic director. Greetings, Avvy. You have 10 minutes. If we go sprinting out of here after your delegation, it has nothing to do with the quality of your presentation. It has everything to do with us going and voting. The floor is yours.

**Ms. Avvy Go:** Chair, I won't take that personally.

**Mr. Yakabuski:** So is this going to be a 10-minute bell?

**The Chair:** I think it will be, but it could be called any minute.

**Ms. Go:** Thank you. My name is Avvy Go. I'm the clinic director of the Metro Toronto Chinese and Southeast Asian Legal Clinic. We are a community-based legal clinic that provides free legal services to mainly Chinese and Vietnamese communities in the Toronto area. I have to also echo what Ms. Marie Chen had said earlier. We only found out about this hearing Monday evening, so we very quickly put together submissions, but certainly a lot more advance notice to as many groups affected by this as possible would have been a much better process.

Over the years, we have represented a number of immigrant parents whose children are subject to suspension and/or expulsion orders from various schools within the Toronto District School Board. As immigrants, many of these parents are often shut out of the education system that the children are placed in. Many do not have any ongoing communications with the school that the children attend because of a number of reasons. Sometimes it's because of the language barriers. Some of these parents work a number of jobs just to make ends meet, so they don't have the time to communicate with the school. Some simply believe that once the kids are there, the school will be there to provide for the kids. They have a lot of deference to the teachers and the school principals. They don't question the authority. As a result, many immigrant parents are not kept abreast of what some of the issues are that their kids are faced with in school. For some of them, the first call they would ever get from the school principal is the one telling them that their kids are being suspended.

To these parents, the whole suspension/expulsion review appeal process is simply beyond their comprehension. From our experience and perspectives, the schools have done very little to inform the parents about the process involved. Under the current framework, the decision to suspend rests solely with the school principals, who have their own personal values, principles, prejudices and biases. By the authority of the legislation, school principals literally hold the future of these students in their hand, yet there is very little accountability as to how such tremendous power is being wielded in any of these individual cases.

We believe that changes to the entire process and system are long overdue. The amendments that are being proposed here under Bill 212 will help in some way to add accountability to the suspension and expulsion process, but it does not in our view address the underlying systemic problems that lead to the alienation of

students, particularly immigrant and racialized students, in our system.

I have a number of recommendations. I know the bell is ringing, so—

**The Chair:** No, we have 10 minutes, so don't let this—I wanted to make sure this didn't interfere with your presentation, so you just keep going.

**Ms. Go:** Okay. I'm just going to go through some changes that we thought would be able to improve the bill a little bit. First of all, around the mitigating factors, we agree with the African Canadian Legal Clinic that those factors should be put in the act itself and not left to the regulations. They are too important to be left to the regulations. Certainly, the terms of settlement provided by the Ontario Human Rights Commission and the ministry will be a good place to start.

Secondly, we want to make sure that suspension and expulsion decisions are made in a truly transparent and accountable manner. We recommend that the act be amended to make it explicit that decisions to suspend and expel students can only be made as a last resort after all other non-disciplinary measures have been tried and have failed to address the problem. Such decisions have to be made in accordance with the best interests of the child, subject to the suspension or expulsion order in question.

We also believe that mandatory suspension goes against the principle of progressive discipline that this act is supposed to promote, so we recommend that the act be amended to remove any form of mandatory suspension.

We also think that while it's good that the act requires the principal who makes the decision to ensure that written notice of the decision is given promptly to the student and his or her guardian, in our experience, in reality school principals do not respect that requirement. Rather than leaving it up to the individual principal to determine what "promptly" means, we recommend that the act be changed so that principals are required to give written notice within two school days of the decision to suspend or expel a student.

On the issue of investigation, it's our experience that many school principals make suspension decisions without first hearing from the students or the parents involved. The bill now requires a principal to make "all reasonable efforts to speak with" the students and the parents, but we think that's simply not good enough. The principles of fairness and natural justice require that the person who is most directly affected by the decision be given an opportunity to present his or her case before the final decision is made. Therefore, we recommend that instead of just saying you have to make reasonable efforts, the act should require and mandate school principals to actually talk to the students and the parents before they suspend anyone.

We also recommend that the Ministry of Education set up an office whose mandate is simply to act as an advocate and support for families whose children are subject to suspension and expulsion orders. The story that you've heard—I guess in a way, it's the other side of the story, but it's the same idea. The parents are very much



excluded from the whole process, particularly from our point of view when we deal with immigrant parents. They have no idea what the process is like, they have no knowledge of the system, how to appeal the suspension order. Nobody tells them anything. Now maybe they will get a letter that says there's this appeal process, but how would many of them actually do anything about it when they have no resources to do so? You can't count on legal clinics. Many of them may not even do these kinds of cases, and even those that do can only take on very few cases at the same time. You need to have a body whose job is really to advocate for the parents and therefore for the children. They don't have anyone advocating for them right now. There is a huge power imbalance between the school on the one hand and the parents and students on the other. So make sure that you have an advocate there and make sure the advocate will be able to assist those who are the least able to advocate for themselves, meaning those whose first language is not English or French, or those who have other difficulties in accessing the school.

In conclusion, while we recognize that the government is moving in the right direction by bringing forward the bill to improve procedural fairness, it doesn't really go to addressing the substantive systemic issues behind why students may end up in the situation where they might be subject to suspension or expulsion. We think that a lot more needs to be done in that respect—of course, I'm sure you've heard this 20 times now—investment in our public school system, investment in the children and investment, honestly, in the broader society, because the school is just a mirror of what is happening outside. If we're not addressing the inequities that exist outside, they will be transferred into the school system itself. Thank you.

**The Chair:** Wonderful. Thank you very much, Avvy. Unfortunately, you've left us with about a minute for all of us to ask you questions, so if you don't mind foregoing that minute—

**Ms. Go:** Sure.

**The Chair:** —or do you have anything to say for a minute?

**Ms. Go:** No.

**The Chair:** Okay, thank you. We will leave it at that and let the members go and vote.

We need to go upstairs. A vote will be held in about five minutes. Following that vote, we'll be back down here to hear from the last two delegations this afternoon.

*The committee recessed from 1749 to 1800.*

#### ARCH DISABILITY LAW CENTRE

**The Chair:** If I could ask members of the audience to take their seats, and if we could call forward the ARCH Disability Law Centre, Robert Lattanzio. Sir, the floor is yours. We aren't anticipating any interruptions. You have 10 minutes, the same as everybody else. Use that as you see fit, and we'll share the time that's left over, if there is any.

**Mr. Robert Lattanzio:** Thank you very much. Welcome back. My name is Robert Lattanzio. I'm a staff lawyer with ARCH Disability Law Centre.

I'd just first like to echo comments made by Avvy Go and Marie Chen earlier. It's unfortunate that there wasn't much notice to these hearings. I know of many disability organizations and students and parents who really need to be heard. I just wanted to begin by stating that.

Perhaps I should tell you a little bit about ARCH. ARCH is a charitable, not-for-profit specialty legal clinic, primarily funded by Legal Aid Ontario, that is dedicated to defending and advancing the equality rights of persons with disabilities, regardless of the nature of the disability. We have a provincial mandate and a membership consisting of over 60 disability organizations. ARCH provides education to the public on disability rights and to the legal profession on disability law. We also make submissions to government on law reform matters such as submissions to the safe schools action team. We offer a telephone summary legal advice and referral service, and many calls we receive deal with human rights and education matters. ARCH also maintains an informative website on disability law.

Lastly, ARCH represents national and provincial disability organizations and individuals in test case litigation at all levels of courts and tribunals, including the Supreme Court of Canada. ARCH recently represented the interveners in Wynberg and Ontario at the Ontario Court of Appeal, and not so recently represented the respondent in a seminal Supreme Court of Canada case, Eaton and Brant County Board of Education. I mention these cases because at their very core was the issue of access to education for students with disabilities. It is this theme—access to education—that I wish to talk about today in the context of safe schools.

I will not be providing you today with ARCH's analysis of Bill 212. Although we do have concerns with the bill, we will do so in written submissions to this committee. I believe the deadline is May 25. Rather, I wish to discuss an issue that has unfortunately not been addressed by Bill 212. I am referring to section 305 of the Education Act, also known as regulatory exclusions, or coerced or involuntary withdrawals. The use of this mechanism pursuant to section 305 has had devastating consequences and has been probably the most insurmountable barrier to accessing education for students with disabilities in this province.

Section 305 was proclaimed in force on September 1, 2000, along with the other safe schools amendments, commonly referred to as the Safe Schools Act. Even though it was introduced as part of the Safe Schools Act, this provision and the issue of exclusion generally are, shockingly, completely ignored by Bill 212. ARCH, along with other community groups, has raised this issue many times. I have provided this committee with copies of a brief ARCH prepared in 2003 for the then Minister of Education, Gerard Kennedy, regarding our concerns with safe schools and section 305.



Section 305, together with subsection 3(1) of its corresponding regulation, which is regulation 474, provides principals and vice-principals and any other person authorized by a school board to exclude a person from school premises if, in their judgment, the person's presence "is detrimental to the safety or well-being of a person on the premises...." So the purpose of this section is to help prevent unwanted visitors from coming on to school property. Section 305 not only provides exclusion powers to school officials, but it makes it a provincial offence to contravene a regulatory exclusion, punishable by a fine of up to \$5,000. There is no appeal mechanism for a regulatory exclusion. Once a student is subjected to this mechanism, they may find themselves forever unable to access public education and without any means to challenge it.

Students with disabilities are adversely affected by the use of this mechanism of regulatory exclusion. Legal counsel for school boards actively encourage principals to use this power against students, despite the fact that the section was never intended to be used to keep students with disabilities out of school.

At ARCH, we receive many telephone calls from parents concerning the operation of section 305. Typically, principals will contact the parents and tell them in advance that they intend to impose a regulatory exclusion on their children due to concerns about anticipated disability-related behaviours, whatever they may be. The parents will be given the option of withdrawing their child instead of being excluded, and some parents will take that option, fearing any consequences of not taking that option. But whether it's imposed or whether it's just threatened, the effect is essentially the same: Students with disabilities are prevented from attending school, without any available defences, mechanisms or avenues of redress and without the ability to secure any educational programming. Some students return to school several months later; some never do. This is contrary to the Ontario Human Rights Code and the Canadian Charter of Rights and Freedoms.

Based on the calls we receive from parents and pupils, our work with community groups, as well as our litigation, it is our understanding that it is often a lack of appropriate accommodation, pursuant to the Human Rights Code, to meet disability-related needs of students or an unwillingness to provide appropriate accommodations by the school and board that leads to the use of section 305 or the threat to use that section.

As I was preparing my oral submissions today in my office, I coincidentally received a disturbing call from a parent whose child had just been excluded pursuant to section 305, after numerous attempts at trying to secure appropriate accommodations with their school. These are the types of calls we receive regularly.

The effect of the use of section 305 as a disciplinary provision is therefore discriminatory to students with disabilities. Insofar as this provision creates exclusion and segregation, this application of section 305 represents a significant backward step in public policy.

Education is a prerequisite to full citizenship. Students with disabilities must therefore not be needlessly excluded from the public education system. Students with disabilities, unlike their peers, are being excluded because of behaviour which they cannot control. Children should not be punished for having a disability. Children should not be denied a chance to learn just because they have a disability.

We therefore make a recommendation with respect to the bill before us today. This recommendation is simple, captures the true legislative intent of section 305 and would not cost this government any money. Possible language amending section 305 could be as follows: "A 'person' under this section does not include a person enrolled or registered in school or engaged in school-related activities."

A possible mechanism for schools to react to potentially dangerous situations still remains pursuant to subsection 265(1)(m) of the Education Act. More importantly, however, student behaviour is governable through the application of the suspension and expulsion provisions, both of which have corresponding appeal mechanisms.

ARCH's recommendation would ensure that students with disabilities are not excluded from school so easily without any recourse to appeal.

In conclusion, with the passage of the Safe Schools Act, the provincial government created a situation in which public education for children with disabilities is no longer guaranteed and can be—and is presently being—taken away at any time. More and more, the Safe Schools Act is being used against students with disabilities to remove them from the public education system.

We urge this committee to ensure that this bill remedies the discriminatory impact of the Safe Schools Act and, specifically, the incorrect use of section 305 of the Education Act and to also ensure that safeguards are in place for students with disabilities to protect their equal right to access regular public education.

Again, ARCH will provide more detailed written submissions to this committee.

**The Chair:** Thank you. You've left about a minute in total. Did you have anything else you wanted to say in summary?

**Mr. Lattanzio:** No, I think that's it.

**The Chair:** I can't imagine three parties sharing a minute.

**Mrs. Sandals:** Chair, could I have 30 seconds to clarify an issue which has been raised several times?

**The Chair:** If the other parties are agreeable to that, yes.

**Mrs. Sandals:** Regarding the whole issue of section 305: I agree totally with your analysis, the safe schools action team agrees with your analysis, the minister agrees with your analysis.

It is our intent to amend reg 474 so that there will be a section added to clarify that the principal cannot use his or her authority under the regulation to remove students who are enrolled at the school—and then goes on.



Basically, we agree with your intent, so whether we need something to clarify that that intent is publicly understood—but your analysis is bang on. We need to sort that out so that people understand.

**Mr. Lattanzio:** That is incredibly great to hear.

**The Chair:** Thank you very much for coming today.

#### ORGANIZATION OF PARENTS OF BLACK CHILDREN

**The Chair:** We'll move on to the last delegation of the day, and that is the Organization of Parents of Black Children. Owen Leach, Yolisa Dalamba and Vickie McPhee, please come forward and identify yourselves for Hansard. You have 10 minutes; you can use that any way you see fit, and we'll share the time at the end if there's any left.

1810

**Mr. Owen Leach:** Oh, I just about made it. It seems that this hearing was pretty secret. Somehow it didn't get around to the community and we managed to catch it at the last minute. I don't know why it has been done like this.

My main critique of the whole approach of the Safe Schools Act is really—I call the Safe Schools Act the criminalization act of African-Canadian students. I think the Liberal Party must get out of the Harris era into a new era and restore the anti-racism and equity policies that were in place before Mike Harris came in, which he actually disbanded. Nothing can be done to make schools safe for African-Canadian youth unless there's an anti-racism policy. You must recognize that we are living in a racialized society, and many incidents that take place in the schools end up with accusations landing on African Canadians rather than on some white students who have initiated the problem. I have intervened in many cases and I speak with authority on that.

The police should not be partners in education in schools. The police are a service to the whole of society. When they become a partner, what happens is that parents only hear about their children's arrests after they have landed in jail, because the school, the principal and the police work in such close partnership that any incident that occurs immediately involves the police. In some schools they're actually patrolling, which is obnoxious to me. It is repugnant that you have a school where the police are patrolling. I think the police should not be there. They should be available in case of any situation where they're needed, but not a partner equal with parents in the school system.

The so-called Safe Schools Act has also been antagonistic to parents. The trespass law has been invoked against many parents and has been held up before them to silence them. Some parents have not been able to go on school premises to accompany their children into the school.

In this short time, I just want to say that when there's an incident at the school, I don't want to hear about an advisory committee. I want the parent to be notified right

away, involved in the problem and able to look after their child rather than being told after the fact that their child is in jail. Who decides to put a child, who has come to school to be educated, in jail without the parents' knowledge? That is abominable.

I am also concerned about army recruitment in the school system of Ontario. I am aware that there are co-op courses now available to students to join the army. This can only result in introducing aggressive behaviour in students if they are in school and going into military activity.

The provincial government has broken its promise to repeal the Safe Schools Act, and I say that you must honour your promise in this election or you will have to answer to the people of the province.

**Ms. Yolisa Dalamba:** My name is Yolisa Dalamba, and I will try to be as quick as possible.

As a racialized parent, I am framed as uncaring, dysfunctional, illiterate, angry and confrontational even before I open my mouth, and this bill perpetuates my criminalization, isolation and exclusion. On one hand, the ministry asserts that Bill 212 will ensure that all students have a right to education in a safe and inclusive environment, and yet all these regulations suggest an even more punitive, bureaucratic, complicated, time-consuming and stressful experience and process, particularly for families and single parents who already have no support systems provided.

I would also like to pick up on a point that was actually made by MPP Rosario Marchese, who talked about the fact that youth workers, social workers, youth counsellors and educational assistants have been systematically cancelled. We believe that this bill does nothing to address the support systems that youth and their families need, and we're calling for the reinstatement of these positions in the school system.

Mr. Marchese also pointed out that issues of fairness and the daily oppression and lived experiences of racialized learners and students with disabilities have been described as a perception. We vehemently want to name the fact that racism, as Owen has just said, exists and it is not a perception but a fact. As a result, it creates a climate of denial, dismissal and lack of accountability when this notion that racism or oppression as a perception continues to be repeated.

In closing, I would like to talk about the fact that you mentioned advisory councils. We want to ensure that the one you are thinking about models the one they have in Nova Scotia. They have the Council on African Canadian Education, which has the direct ear of the Minister of Education. Along with that, there is a Minister of African Nova Scotian Affairs, who deals specifically with issues of education affecting learners, families and their communities. Indeed, we are still calling for the repeal of the Safe Schools Act.

**Ms. Vickie McPhee:** My name is Vickie McPhee. I am not only part of the OPBC; I am also a member of rights watch network, which was instrumental in the



settlement that came out of the Ontario human rights system.

I'm going to talk for a moment as a parent. I have a five-year-old child at Regent Park/Duke of York Junior Public School. He was out of school for a week. On the Friday, the principal called to tell me that if my child's behaviour continued to escalate in the classroom as it did that afternoon—he was not there for five days—there would have to be measures taken. If my child was not in the school for four days and the principal did not know and still assumed that my child was misbehaving, is my perception that racism exists in the public education system only my perception?

I want to move a little bit from that. The National Inner City Conference was to give parents and community members an opportunity to address strengthening the public education system. That did not happen. While at that conference, a young woman of Caucasian descent stood up and said, "We need to call a spade a spade." I put my hand up as an advocate, a human rights advocate, a well-skilled human rights advocate, and asked for a learning moment. Lloyd McKell's department shut me down. Is my perception of racism in the public education system only my perception? I would say not.

In closing, I want to say that without a full parental consultation on Bill 212, the board again, the ministry again would have fundamentally failed the community you keep telling me you want to support. I want to urge you, please, to take a step back and examine your whole consultation process. Again, it has failed the very community you say you want to help. That's it.

**The Chair:** Thank you very much for your presentation today. It certainly is appreciated. That is our last presentation of the day.

I just want to remind the committee of some of the details surrounding the committee before we adjourn. Next Wednesday, May 23, is the hard deadline for amendments. That is a hard deadline; there can be no extensions granted to that. Written submissions are due on May 25; however, amendments are due on the 23rd. So any group that has presented so far will be e-mailed, and if they propose to send in any suggestions for amendments, they will be asked to do so by the 23rd. Clause-by-clause will take place at 3:30 on May 28.

This committee is adjourned.

*The committee adjourned at 1821.*







## **STANDING COMMITTEE ON GENERAL GOVERNMENT**

### **Chair / Président**

Mr. Kevin Daniel Flynn (Oakville L)

### **Vice-Chair / Vice-Président**

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)  
Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)

Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)

Mr. Kevin Daniel Flynn (Oakville L)

Mr. Jerry J. Ouellette (Oshawa PC)

Mr. Mario G. Racco (Thornhill L)

Mr. Lou Rinaldi (Northumberland L)

Mr. Peter Tabuns (Toronto–Danforth ND)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

### **Substitutions / Membres remplaçants**

Mr. Frank Klees (Oak Ridges PC)

Mr. Dave Levac (Brant L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mrs. Liz Sandals (Guelph–Wellington L)

### **Also taking part / Autres participants et participantes**

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

### **Clerk / Greffière**

Ms. Susan Sourial

### **Staff / Personnel**

Mr. Larry Johnston, research officer,  
Research and Information Services



## CONTENTS

Wednesday 16 May 2007

<b>Education Amendment Act (Progressive Discipline and School Safety), 2007, Bill 212,</b> <i>Ms. Wynne / Loi de 2007 modifiant la Loi sur l'éducation (discipline progressive et sécurité dans les écoles), projet de loi 212, M<sup>me</sup> Wynne</i> .....	G-1173
Ontario English Catholic Teachers' Association .....	G-1173
Ms. Donna Marie Kennedy	
Ontario Principals' Council .....	G-1175
Ms. Laura Hodgins	
Mr. Karl Sprogis	
Elementary Teachers' Federation of Ontario .....	G-1176
Mr. Gene Lewis	
Justice for Children and Youth .....	G-1177
Ms. Martha Mackinnon	
Ontario Public School Boards' Association .....	G-1179
Mr. Rick Johnson	
Mr. David Walpole	
Ms. Jennifer Trépanier	
Ontario Secondary School Teachers' Federation .....	G-1181
Mr. Ken Coran	
African Canadian Legal Clinic .....	G-1182
Ms. Marie Chen	
Ms. Lesa McDougall .....	G-1184
Metro Toronto Chinese and Southeast Asian Legal Clinic .....	G-1185
Ms. Avvy Go	
ARCH Disability Law Clinic .....	G-1187
Mr. Robert Lattanzio	
Organization of Parents of Black Children .....	G-1189
Mr. Owen Leach	
Ms. Yolisa Dalamba	
Ms. Vickie McPhee	



G-51

G-51

ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature



# Official Report of Debates (Hansard)

Monday 28 May 2007

# Journal des débats (Hansard)

Lundi 28 mai 2007

**Standing committee on  
general government**

Education Amendment Act  
(Progressive Discipline  
and School Safety), 2007

**Comité permanent des  
affaires gouvernementales**

Loi de 2007 modifiant  
la Loi sur l'éducation  
(discipline progressive  
et sécurité dans les écoles)

Chair: Kevin Daniel Flynn  
Clerk: Susan Sourial

Président : Kevin Daniel Flynn  
Greffière : Susan Sourial



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 28 May 2007

Lundi 28 mai 2007

*The committee met at 1600 in room 151.*EDUCATION AMENDMENT ACT  
(PROGRESSIVE DISCIPLINE  
AND SCHOOL SAFETY), 2007LOI DE 2007 MODIFIANT  
LA LOI SUR L'ÉDUCATION  
(DISCIPLINE PROGRESSIVE  
ET SÉCURITÉ DANS LES ÉCOLES)

Consideration of Bill 212, An Act to amend the Education Act in respect of behaviour, discipline and safety /  
Projet de loi 212, Loi modifiant la Loi sur l'éducation en ce qui concerne le comportement, la discipline et la sécurité.

**The Chair (Mr. Kevin Daniel Flynn):** Okay, we do have a quorum, ladies and gentlemen, and we're ready to proceed. We're dealing this afternoon with Bill 212, An Act to amend the Education Act in respect of behaviour, discipline and safety.

Are there any comments, questions or amendments to any section of the bill, and if so, to which section?

We're beginning with what's marked as page 1. It's a PC motion. Just allow me a little explanation on this. Mr. Klees, you may be interested in this. If you would like to move these, we've had some questions raised about them. I'll let you start with the procedure and then I'll outline what I've heard so far.

**Mr. Frank Klees (Oak Ridges):** Okay.

I move that the bill be amended by adding the following section:

"0.1 The Education Act is amended by adding the following section:

"Ombudsman may investigate boards

"Role of Ombudsman

"218.1 The Ombudsman appointed under the Ombudsman Act may investigate any decision or recommendation made or any act done or omitted in the course of the administration of a board and affecting any person or body of persons in their personal capacity and, for that purpose, a board shall be considered a government organization within the meaning of the Ombudsman Act and that act applies to a board with necessary modifications."

**The Chair:** I've been asked about this, actually about the first three amendments. This one, in my opinion, with the support of staff, is actually beyond the scope of this

committee. This committee is here to deal with matters of behaviour, discipline and safety. We could deal with it if unanimous consent were granted by the committee.

The other two, just so you'll know in advance, were questioned but actually are in order.

**Mr. Klees:** I understand. I was aware that that would probably be your ruling. I did feel that it was an important issue to raise and was hoping that I could presume on the unanimous consent of the committee, hoping that the government members and my colleague from the third party would agree—

**Mrs. Liz Sandals (Guelph-Wellington):** No, there will not be unanimous consent.

**Mr. Klees:** —and especially the parliamentary assistant, who I'm sure is a strong advocate of transparency and accountability, would lend her unanimous support.

**Mr. Rosario Marchese (Trinity-Spadina):** I introduced Bill 90, which is exactly what the member talks about. It has a lot to do with the safety of children or defending students, which has a lot to do with not just defending the individual but also how we protect individuals from potential abuse, or how we give parents a voice in the event that somehow they feel they have not been able to get any proper attention from the principal or the superintendent or the school trustee, or even the board, and that where they followed the rules—

**Mrs. Sandals:** On a point of order, Mr. Chair: If this has been ruled out of order, why are we debating it?

**The Chair:** We aren't debating it; I think people are just expressing their opinions on it.

**Mr. Marchese:** Making a case to you.

**The Chair:** Yes. Mr. Klees asked for unanimous consent of the committee, or was about to ask for unanimous consent. Mr. Marchese, are you just about done?

**Mr. Marchese:** I was just making a case to you as to why it would be in order, but you're saying that you and the clerk have already said that this is not in order.

**The Chair:** That's right. It's beyond the scope of the committee. It's in order to move an amendment to the section; there's no problem with that. It's just that the substance of the amendment is beyond the scope of this committee.

**Mr. Marchese:** I would support the motion, obviously, for unanimous consent.

**The Chair:** It's been moved by Mr. Klees that unanimous consent be granted. Is there unanimous consent?

**Mrs. Sandals:** No.

**The Chair:** We're moving on to page 2. Mr. Klees.



**Mr. Klees:** I move that the bill be amended by adding the following section:

“0.2 The Education Act is amended by adding the following section:

“Legislative grants—guaranteed minimum funding

“234.1 In making regulations governing education funding under section 234, the Lieutenant Governor in Council shall ensure that sufficient funding is provided to every board so that,

“(a) there is a guidance counsellor in every elementary school of the board;

“(b) the board can provide appropriate supervision so that pupils who are suspended for one day or less can serve their suspensions in their schools;

“(c) the board can provide transportation to and from a program for suspended pupils or expelled pupils under part XIII; and

“(d) the board can provide services related to early identification and intervention in response to pupils with special behavioural and learning needs.”

**The Chair:** Thank you, Mr. Klees. Speaking to the motion?

**Mr. Klees:** I feel that if the government is serious about this bill and providing the additional services that would be necessary to support students who find themselves in difficulty, this section would be supported by the government. In fact, the issue of having the appropriate supports, first of all through the presence of a guidance counsellor in the elementary schools at the very least, would provide an important step to filling the gap that we hear from the Ontario Principals' Council exists today.

As a result of some of this government's policies, we hear from the Ontario Principals' Council that they're very concerned that, with the reduction in supervision, it's difficult for them to carry out their mandate to provide adequate levels of supervision. Particularly in light of the tragic circumstances that were experienced this past week with the loss of a student in our school, I think it's incumbent upon us to consider taking very serious steps that would provide counselling and a safe place for students to go if they feel threatened, if there are circumstances in a student's life that may be challenging.

We heard from representations to this committee from a number of sources, specifically one of the teacher federations, that teachers don't have the time to actually take on the responsibility of what is being referred to as “progressive discipline” by this government, not a new concept but certainly a concept that is being advocated through this bill, and we've heard the Minister of Education speak to this. If teachers don't have the time to focus on students and provide that kind of ongoing oversight and assistance and counselling, then at the very least one would think that the government would be willing to step forward with funding to ensure that at least there is a guidance counsellor available.

The same rationale is there for the other provisions of this amendment. If in fact there is to be a program for suspended students or expelled students, as is the very

cornerstone of this legislation, then one would expect that the funding would be there to support not only the program but also access to the program by the student and, hence, clause (c) of this amendment that speaks to the provision of transportation to and from that program.

Probably most important relating to this amendment is the issue of providing services relating to the early identification and intervention with regard to students who demonstrate special behavioural needs and certainly learning needs.

I think as well if we go through a number of the representations that were made to this committee by various stakeholders, this amendment incorporates a number of the appeals that were made to the government to ensure that the necessary resources and funding would be available to support the program.

1610

**Mr. Marchese:** I just want, for the record, to point out that the Conservative Party has shown incredible sensitivity in one term of opposition. I'm hoping that they will have another term in opposition to show greater sensitivity to the issues, because I support the amendment. I think it's great. I support (a), (b), (c) and (d) and would have included an (e), which you forgot about—

**Mr. Klees:** I was leaving it to you.

**Mr. Marchese:** That's why I say one more term will show greater sensitivity—and that is “ensure meaningful programs are provided,” because I'm worried about that. I don't believe this government's going to offer the meaningful programs; I really don't believe that. I know they claim they are and I know they're claiming to spend \$25 million extra. I don't think that money is there. I think they're inventing that number. It's just a number that they throw out in the air, but it won't be a real number, and if it's a real number, they'll simply steal from another program and then, lo and behold, there's \$25 million.

But I agree with every one of the elements that you have included because I think they would be very helpful, and I would have added “ensure meaningful programs are provided.”

**Mrs. Sandals:** First of all, as we all know, funding is dealt with annually for the grants for students' needs. In fact, that is the area of the act where there's a regulatory structure set up for an annual regulation which controls the funding, the transfer of funds to school boards. That is the appropriate technical place for funding to be described, not buried within the act itself in terms of specific funding. It takes a certain amount of gall—perhaps a colossal amount of gall—after the amount of money that was removed from the education system under the previous government, to turn around and try to convince us that we should now start picking off individual funding lines and embedding them in the act.

Having said that, I would point out that there has been a commitment to \$31 million being spent on implementation of this act, if it is passed when it goes back to the House. Of that, \$23 million is specifically targeted for the implementation of the alternative programs for long-term



suspended and expelled students, which will be required under Bill 212. I would like to assure Mr. Marchese that that is a real \$31 million. I can assure him that the battles which the Minister of Education has gone through in getting that to Management Board and approved through the budgetary process, that is real money and is approved in the budget.

The other thing is that, even from a technical point of view, this is not a particularly sensible amendment. If we look at clause (a) requiring a guidance counsellor in every elementary school of each and every board in the province, in fact the primary function of guidance counsellors is to provide academic guidance in terms of program choice. You would not normally find a guidance counsellor in a K-to-6 school in any school in any board. That is not the function that they carry out. So the amendment isn't even sensible from a technical point of view. We will not be supporting it.

**Mr. Klees:** I find the parliamentary assistant's comments interesting. I think that to the degree that she might attempt to live in the present, it might help her somewhat. Given the circumstances that we face today, the very real circumstances in our schools, there may well be an opportunity to provide a new definition for what guidance counsellors do, particularly in our elementary schools. I would think that might be forward thinking: that there should be someone designated; that there be some effort put into considering what we can and should be doing in our schools to provide the necessary support for students who are finding it challenging; that perhaps the roles and responsibilities of a guidance counsellor be broadened; that the necessary training perhaps be provided.

You mentioned that you're committing \$31 million, and \$23 million of that is going to be specifically targeted to some of your support program. Based on what I read in the press release, where the \$23 million was going to be spent was very succinctly detailed. There was nothing there for the actual programs. There was funding designated for training, for teachers, for principals—I don't have the list. I was looking for the release. I don't have it with me, but I can certainly access it.

My point is that, along with that program, you made it very clear when you made the funding announcement that resources would be delivered into our schools to better equip teachers, to better equip principals. I'm simply proposing here that perhaps what we should also deliver are some additional bodies into those schools so that we can actually do the job that has to be done. If you want to call them something else, call them something else, but the principals are telling us that they don't have the ability to do what has to be done in our schools. That's as a result of your government's policies. It's not me; this is the Ontario Principals' Council. It's the teachers' federations that are telling us that teachers don't have the time to do it. If principals don't have the resources and teachers don't have the time, who's going to do it?

As far as having gall, I do find that offensive. We're here to deal with a very serious piece of legislation. I've

already indicated that as a caucus, we will support it. What we're trying to do in this place is to help make this legislation better, to improve it. Unless this is a farce here, I would think, at the very least, the parliamentary assistant would take this exercise seriously and be willing to consider the proposals that are made factually.

**The Chair:** Thank you, Mr. Klees. Mr. Marchese.

**Mr. Marchese:** I have just a few comments to the parliamentary assistant, because she's commenting on the fact that the \$31 million will be real—and I'm assuming it will be so because you say it will be real—except you promised \$300 million in child care that was never delivered. You promised 20,000 units of public housing; I think we only built, to be generous with you, a couple of thousand—just to be generous. You were going to spend \$4 billion in capital programs, but from the facts I saw about a year ago—I haven't seen anything new, even though I've asked—only \$225 million has been spent.

What is real? How does one determine what is real, especially when they're in opposition or when they're waiting, those who are teachers or students or parents, saying, "How will we know whether this \$31 million will be real, except that you say so?" Will it be in instalments over four years, like most of your programs appear to be? Is it annually? Will there be some accounting? Will we have a standing committee on education finance so we can review that yearly? How are we going to know?

1620

**The Chair:** Any further speakers?

**Mrs. Sandals:** In terms of taking the process seriously, we have a whole package of amendments here which in fact are very serious responses to the comments that we heard at public hearings. It is our belief that Bill 212 is a very good bill. It is our belief that if we could process the government amendments, we will make a good bill even better.

I would be delighted to engage in a debate on the substance of the bill.

Going back to the substance of the particular amendment before us, aside from the political discussion about funding, which is not the content of Bill 212, the technical content of the amendment does not achieve what I believe the PC member wants it to achieve, because if in fact you are asking to have counselling ability in every school, you would not be necessarily dealing with academic guidance counsellors; you would be dealing with child and youth counsellors or some other description of youth worker who has formal training as a youth worker rather than as a teacher, if we're addressing behaviour.

**Mr. Marchese:** I'd just like to remind the parliamentary assistant that the matter we're raising is serious. The \$31 million is something you announced, and I assume you take that seriously. The point of the \$31 million is to provide programs for those students who get suspended. That is serious. We don't know what kinds of programs you're going to be providing. That is serious for me. I'm not certain that the money you're promising



is real. That is serious. It relates very much to the substance of the changes you're making in this bill.

**Mrs. Sandals:** I can only respond that I can give assurances to the member that the \$31 million is real, that the commitment within that \$31 million of \$23 million toward alternative programs is real; I agree that that is a serious matter, that those programs must be funded. We have made that commitment. I'm sorry that he doesn't accept that commitment, but I can only repeat it.

**The Chair:** Are there any further speakers to the amendment?

**Mr. Klees:** I, too, won't let the parliamentary assistant's comments about her amendments being serious—the very clear implication is that the amendment before us now is not serious, and I won't accept that attitude at this committee. I think the parliamentary assistant should try, to some degree, to take off her partisan hat here. This is not a political campaign debate at this committee.

*Laughter.*

**Mr. Klees:** I realize that the parliamentary assistant is amused; I'm not. I'm here on behalf of stakeholders; I'm here on behalf of my caucus. We have put forward a very serious amendment. The parliamentary assistant will conduct herself as she chooses, but it's not very complimentary to her position, certainly not to her role as a parliamentary assistant. Others will be observing what is going on here, and it certainly doesn't speak very highly for this government's suggestion that they might be serious about democratic reform. To consider the comments that are being made here and to read them carefully, as Hansard will represent them, will give people some indication of how seriously this government takes this process.

**The Chair:** Are there any further speakers? We're on the first formal amendment. Seeing none, all those in favour?

**Mr. Klees:** Recorded vote.

#### Ayes

Klees, Marchese.

#### Nays

Brownell, Duguid, Ramal, Sandals.

**The Chair:** That motion is lost.

Moving on to page 3 of your agenda, a PC motion: Mr. Klees.

**Mr. Klees:** I move that the bill be amended by adding the following section:

"0.3 The Education Act is amended by adding the following section:

"Principal's duty, clarification

"265.1 For greater certainty, a principal may not refuse entry to a school or classroom under clause (m) of subsection 265(1) to a pupil who is enrolled in the school."

**The Chair:** Thank you, Mr. Klees. Speaking to the motion?

**Mr. Klees:** I think it's very straightforward. There should be no arbitrary refusal to any student who's enrolled in a school, being kept from entry of the school or the classroom without reason. I think this is simply a protection for that.

**The Chair:** Further speakers?

**Mrs. Sandals:** I quite agree with the intent of this motion, which is to make sure that there is no arbitrary refusal of the right to attend. That will be an ongoing theme as we debate this, I'm sure. However, clause 265 has not been identified by the stakeholders as the problematic instrument within the act. Clause 265 does have with it a right to appeal, so if a student was to be removed under 265, in fact, the student or the parents of the student do have the right to appeal.

The clause—it's not actually a clause, but the regulation which has been identified by the various associations, and certainly in the safe schools action team's consultation the clause which was identified as being problematic, is actually regulation 474-00, the access-to-school-premises regulation, which does not include a right of appeal and which has been used inappropriately in, unfortunately, quite a few cases to exclude students from the school they attend.

It is the government's intent that we will be amending reg 474 to make it clear that that cannot be used to apply to students who are enrolled in the school, so that students cannot be excluded under reg 474 from the school in which they are enrolled. We will be amending the regulation. Obviously because this is the act, there's no way we can indicate that in the act per se. But it's not 265 which is the primary problem here; 265 does have a right of appeal.

**The Chair:** Further speakers?

**Mr. Marchese:** I wanted to agree with the parliamentary assistant in this regard. Also, I think the principal needs to have the right to control access to the school and needs to have that discretion. On the whole, the parliamentary assistant is correct.

**The Chair:** Mr. Klees, further comment?

**Mr. Klees:** No.

**The Chair:** Very good. All those in favour of the amendment on page 3? Those opposed? That motion is lost.

Moving on, then, to section 1, there's a government motion on page 4.

**Mrs. Sandals:** I move that subsection 300(3) of the act, as set out in section 1 of the bill, be amended by striking out "under subsection 311.1(9) or 311.4(3)" and substituting "under this part."

This is really just a technical amendment to accommodate some other things that are getting amended and renumbered.

**Mr. Marchese:** Can you explain that for us, if you have an explanation there?

**Mrs. Sandals:** Where it says "where notice is given to a person under [the named subsections]," it will end up saying "where notice is given to a person under this part."



1630

**The Chair:** Any further speakers? Seeing none, all those in favour of the motion on page 4? Those opposed? That motion is carried.

Moving on to the PC motion on page 5: Mr. Klees.

**Mr. Klees:** I move that section 300 of the act, as amended by section 1 of the bill, be amended by adding the following subsection:

“Mitigating factors

“(4) Where this part requires that ‘mitigating factors’ be taken into account with respect to a decision to suspend, recommend expulsion for or expel a pupil, it means that the following factors must be taken into account:

“1. Whether racial, disability or other harassment was a factor in the student’s behaviour.

“2. Whether the principles of progressive discipline have first been attempted.

“3. The impact of the suspension or expulsion on the student’s continued education.

“4. Whether the imposition of suspension or expulsion would likely result in an aggravation or worsening of the student’s behaviour or conduct.

“5. The age of the student.

“6. In the case of a student with a disability,

“i. whether the behaviour was a manifestation of the disability and whether appropriate accommodation based on the principle of individualization had been provided prior to the behaviour, and

“ii. whether the school failed to provide the pupil with effective accommodation for the disability and whether this failure contributed to the behaviour.

“7. Whether the pupil has the ability to control his or her behaviour or has the ability to understand the foreseeable consequences of his or her behaviour.”

**The Chair:** Thank you, Mr. Klees. Speaking to the motion?

**Mr. Klees:** Mr. Chair, there have been far too many examples of students being dealt with inappropriately, whether it be through suspensions or expulsions from school, that can be and have been traced back to a student’s learning disabilities or special needs, and we have had far too many complaints expressed regarding racial or other harassments as a result of a student’s behaviour. The intent here is simply to ensure that there are some guidelines that are made very clear and that must be taken into consideration as mitigating factors with respect to a decision to suspend or to expel a student.

**The Chair:** Thank you. Mr. Marchese.

**Mr. Marchese:** Some of these mitigating factors appear to be very reasonable, in my mind. There were a lot of deputants who talked about the need to state what those mitigating factors are. This is an attempt to do that, which I find useful. Clearly, if you just end with number 7, it then suggests that it is exhaustive and that there’s no other mitigating factor, so presumably one would want a number 8 that talks about “and any other,” because there are other considerations, I am sure. I would be interested to know whether the parliamentary assistant or the

minister or anyone on staff has thought about what these mitigating factors are or ought to be and whether or not this is a useful attempt to build it into the bill, or whether you prefer it to be in the regulations for whatever reason.

**The Chair:** Thank you, Mr. Marchese. Mrs. Sandals?

**Mrs. Sandals:** The mitigating factors as they currently exist are in regulation. In fact, in the agreement which the Ministry of Education has signed with the Ontario Human Rights Commission, the agreement with the OHRC is that the mitigating factors will continue to be in regulations. That’s actually right in the agreement with OHRC. In some ways, the substantive change around how mitigating factors are treated is that there will now be a requirement, a “shall,” so that the principal “shall” consider, when suspending, whether there are mitigating factors; the board “shall” consider, when expelling, whether mitigating factors apply. That is the piece that gives substance to making sure the mitigating factors will be considered.

In terms of the factors that are laid out here, many of them are actually either in the agreement with the OHRC and therefore will be included in the regulation or are in the existing list of mitigating factors and will continue to be included. However, one of the existing mitigating factors has been left out of this list, and one of the mitigating factors which is in the agreement with the OHRC has actually been left out of this list. Plus, as Mr. Marchese mentions, by keeping the mitigating factors in regulation, there is more flexibility around, as experience shows, new issues arising in schools. If it’s in regulation, we can then add additional mitigating factors if necessary. So we will not be supporting this amendment, not because we don’t agree with the mitigating factors which are listed which will, in one form or another, eventually show up, but just that this list (a) is not exhaustive, and (b) belongs in regulation.

**The Chair:** Mr. Marchese?

**Mr. Marchese:** Parliamentary assistant, if all of these are used now, based on what I heard you say, and one is missing, why could we not add the one that is missing, including another 8 or 9, that simply says, “and any other mitigating factor that we have not included”? Why couldn’t we do that? If we include them all now in regulation, why not include them in the bill, where people could easily see them?

**Mrs. Sandals:** One of the problems when you split the list between the act and then say, “and you can add more later in regulation,” is that you end up with the list in a couple of different places, which tends to make it confusing. People may understand it now, when we first pass it, but two or three years down the road, when you end up with some of the mitigating factors in the act and other mitigating factors in the regs, it does tend to create confusion.

The other thing I would be very nervous about, especially when we’re dealing with an agreement with the OHRC, is our just sort of willy-nilly amending things and possibly not getting the full intent of the agreement with the OHRC captured. Our preference would be to put the whole list in regulation.



**Mr. Marchese:** Except we are assuming that this is the list that is currently used in regulation, and I'm not sure that in regulation it says, "and other factors that the principal may use." I'm not sure that it said that. The list appears to be exhaustive, I'm assuming, based on what I'm hearing, so it would be the same list that is here with the one addition that we missed, and the number 8 says, "In the event that there's another circumstance that might arise, it could be used." But I can't imagine the Ontario Human Rights Commission saying, "We don't agree with this list because these are the main ones," and that if something else should arise, it will appear somewhere. I don't see that that would be in conflict with the human rights commission—or wouldn't be a conflict with me. I don't see it.

**Mrs. Sandals:** The point is, however, that if the whole list appears in regulation, then if over time we need to amend that list, we can amend it without coming back to the act.

**The Chair:** Mr. Klees, any further comments?

**Mr. Klees:** Yes, just to follow up on that: I don't understand that reasoning. I hear what you're saying, but if in fact a subsequent amendment is required, we can still make an amendment in regulation. You can, and you can also make an amendment to legislation at any time. If it's felt that something is important to amend, that's done all the time.

It was our feeling that it was important up front in the legislation to ensure that anyone who is reviewing this legislation understands very clearly what these mitigating factors are that must be taken into account. There are strong feelings; there were strong feelings expressed by stakeholders on this issue. This is why it was felt important to bring it forward.

1640

I always feel—I know that I'm exposing myself here to my friend Mr. Marchese accusing me of historical sins, but I learned from Mr. Marchese's constant criticism over a period of eight years that what you can put in legislation to make it very clear, you should. I have learned and I do believe that, where we can, it's important to do that. However, I hear the parliamentary assistant, and I'm under no illusion that we'll convince her of this.

I do have a question, though. I think I did hear that there were actually two mitigating factors that are not here.

**Mr. Marchese:** She said one.

**Mr. Klees:** Well, she said one, and then she said—

**Mr. Marchese:** I was adding an eighth, which would be any other factor that might arise.

**Mr. Klees:** And I agree with that too, but I do think there were two, and I'd like, just for the record, to know what they are.

**Mrs. Sandals:** They're very similar. I don't have the exact wording of the existing regulation, but in the existing regulation, one of the mitigating factors is whether or not the student presents a danger to other students and

whether their continued presence in the school would present a danger to other students.

In the agreement with the OHRC, there's a very similarly worded one. It was (g) in the OHRC's list, which was that "the safety of other students" was considered to be a mitigating factor. As I say, those are very similar, so when the lawyers have a look at the list of mitigating factors, they're going to have to figure out how that sort of overlap between the two melds into one wording, because they are very similar. But that isn't actually being dealt with in the list here as a mitigating factor.

**Mr. Klees:** I would have gladly accepted Mr. Marchese's point 8 as a friendly amendment and have it unanimously accepted by this committee, but I somehow don't think that's going to happen. What do you think, Mr. Marchese?

**Mr. Marchese:** I'm going to support you, Frank.

**Mr. Klees:** Okay.

**The Chair:** Unfortunately, the deadline for amendments has passed, friendly or otherwise. That was noon, more than a week ago.

Seeing as we're all getting along so well, are there any further speakers?

**Mr. Klees:** Unanimously, we can—

**The Chair:** Even with unanimous consent, we couldn't, unfortunately. The instructions from the House are quite clear.

Any further speakers? Seeing none, all those in favour?

**Mr. Klees:** Recorded vote, please.

**Ayes**

Klees, Marchese.

**Nays**

Brownell, Dhillon, Duguid, Ramal, Sandals.

**The Chair:** On a recorded vote, that loses.

Shall section 1, as amended, carry? Those in favour? Those opposed? Section 1, as amended, is carried.

There are no amendments put forward on section 2. Shall section 2 carry? Those in favour? Those opposed? That is carried.

Moving on to section 3, likewise there are no amendments before us. Shall section 3 carry? Those in favour? Those opposed? That is carried.

Moving on now to section 4, starting on page 6 of your agenda, PC motion.

**Mr. Klees:** I move that paragraph 6 of subsection 306(1) of the act, as set out in section 4 of the bill, be struck out and the following substituted:

"6. Bullying, including cyber-bullying, whether of another pupil, a teacher or any other member of the school community."

**The Chair:** Very good, Mr. Klees. Speaking to the amendment?



**Mr. Klees:** The importance here is that we include cyber-bullying of students and teachers and that all persons who are part of the school community be included in the broader definition.

**The Chair:** Further speakers?

**Mrs. Sandals:** Two issues here: One is that in fact the ministry is planning to issue policy guidelines with respect to the definition of bullying which will be much more substantive than the clause that is given here. Secondly, the actual amendment in Bill 212 which will allow cyber-bullying to be dealt with is the clarification that the principal has the authority to issue a suspension or a consequence not just on the school premises or at school events, but also surrounding issues that have a negative impact on school climate. So it's the impact on school climate which in part will allow the cyber-bullying to be included. But we would want, when we're looking at bullying, to make it clear that we are dealing with verbal, social and physical bullying and that, obviously, cyber-bullying is one of the ways in which either verbal or social bullying can occur. So we will be dealing with this more substantively when we get to the policy guidelines in the bill.

**The Chair:** Any further speakers?

**Mr. Klees:** My question would be, if you agree that it should be dealt with more substantively, why would you not deal with it more substantively in legislation?

**Mrs. Sandals:** We believe that the discussion around how to distinguish bullying from a one-off incident is something that is more appropriately described in the policy guidelines.

**Mr. Marchese:** A number of deputants talked about having to specify what this means, and clearly the government is going to need a whole lot of time to review the language, and I don't think they're obviously ready. If we had some language, I would have preferred to have seen something in the bill, but I'm sure it's going to be complicated trying to get the right wording on this issue, so we'll wait for the regulation.

**The Chair:** Are there any further speakers to this amendment? Seeing none, all those in favour? All those opposed? That motion loses.

Moving on: Mr. Klees, your amendment on page 7.

**Mr. Klees:** We're not doing too well here. I think there's a trend developing.

**The Chair:** I think Rosario is warming up to you, though. That was the feeling I was getting.

**Mr. Klees:** I don't know.

I move that subsection 306(2) of the act, as set out in section 4 of the bill, be amended by striking out "any mitigating or other factors prescribed by the regulations" at the end and by adding the following clauses:

"(a) the safety of all pupils and staff in the school;

"(b) the pupil's discipline history;

"(c) the mitigating factors; and

"(d) any other factors prescribed by the regulations."

**The Chair:** Speaking to the amendment?

**Mr. Klees:** It's very clear from a submission by the Ontario Principals' Council that they would like to ensure that they have the latitude to consider a number of

factors as they assess the issue, and that they should be able to consider, for example, the discipline history of a student. Without that latitude, it would be difficult for them to ensure that the appropriate progressive discipline is applied.

**The Chair:** Are there any further speakers?

**Mrs. Sandals:** If we look at what is being stricken, the bill already references the consideration of mitigating or other factors prescribed by the regulations. As I just mentioned, the issue of the impact on the safety of others in the school of having the student continue to attend school is already part of the mitigating factors, and presumably the principal would be considering the pupil's discipline history as part of the review of the progressive discipline to date. So, quite frankly, those things are already covered in the bill as stated.

**Mr. Marchese:** Just a question again to the parliamentary assistant: Because (c) and (d) cover what's already there and it is true that one assumes that the principal is taking into account (b) and surely (a) as part of what they would do, I'm not sure it would hurt to state it—to leave (a) as it is in a public way; I don't think it takes away from anything—and to include "(b) the pupil's discipline history." It simply says in law that they will do that automatically, rather than assuming that that is the case. I'm not sure it's a problem to have it written in this way.

1650

**Mrs. Sandals:** These things will be covered in the mitigating factor regulation. As I say, (c) and (d) are already covered in the language of the bill, which refers you to go to the regulation. These are issues, like the other ones we looked at in the last amendment, that will be covered within the regulation. So it's there already. I don't think we need to introduce re-stating what is already there.

**Mr. Klees:** I would then ask, for the record, that the parliamentary assistant be willing to give us an assurance that (a) and (b) will in fact be included in regulation.

**Mrs. Sandals:** As I said before, (g), which was left out of the previous amendment which you had proposed, is the safety of other students. That's right in the OHRC agreement. It's also covered in the existing mitigating factors. So that will be dealt with. In the list which you had submitted, which is in the OHRC agreement, the principles of progressive discipline being recognized, when you review what has taken place through progressive discipline, you're by definition looking at the discipline history of the student, and when you review the progressive discipline, you're by definition looking at the discipline of the student. Those really are getting covered in slightly different wording, but they are covered.

**Mr. Klees:** I think it would have been far simpler to simply accept the amendment and a lot shorter in duration, but we're not in control.

**Mr. Marchese:** They're just so unfriendly to you, Frank. I just don't get it.

**The Chair:** We have a motion on the floor now, moved by Mr. Klees, on page 7.



**Mr. Klees:** A recorded vote.

**Ayes**

Klees, Marchese.

**Nays**

Brownell, Dhillon, Duguid, Ramal, Sandals.

**The Chair:** That motion loses.

Moving on to the government amendment on page 8.

**Mrs. Sandals:** I move that subsection 306(3) of the act, as set out in section 4 of the bill, be struck out and the following substituted:

“Suspension

“(3) If a principal decides to suspend a pupil for engaging in an activity described in subsection (1), the principal shall suspend the pupil from his or her school and from engaging in all school-related activities.”

The effect of this is that the section being amended was where it brought up the idea, which raised some discussion at the hearings, of suspension from one or more classes—in other words, the issue of a time out or a withdrawal for part of the day—being considered as a suspension. We heard from quite a number of the stakeholders that they were very concerned that the progressive discipline, which might see a student removed from a class or might see a time out when they’re having a meltdown, or might see a detention at noon hour, for the sake of argument—that under that wording, things which educators would regard as forms of progressive discipline might be inadvertently treated as a suspension. We do not want that to happen. We obviously want to encourage those forms of progressive discipline. So this amendment is a companion with another amendment that we will be placing shortly where we will define a suspension as being from one to 20 days, and we’re removing the time out/withdrawal from the suspension language. The two will fit together as a package to make it clear that suspension is something that takes one or more days.

**The Chair:** Speakers? Seeing none, all those in favour? Those opposed? That motion on page 8 is carried.

Moving on to the PC motion on page 9.

**Mr. Klees:** Chair, given the behaviour of the government with my previous amendment, I’ll withdraw this one because it will just save some time.

**The Chair:** Thank you, Mr. Klees.

Moving on to the government amendment on page 10.

**Mrs. Sandals:** I move that subsection 306(4) of the act, as set out in section 4 of the bill, be struck out and the following substituted:

“Duration of suspension

“(4) A suspension under this section shall be for no less than one school day and no more than 20 school days and, in considering how long the suspension should be, a principal shall take into account any mitigating or other factors prescribed by the regulations.”

I just explained why we’re doing that. It’s companion with the other one so that suspension is one to 20 full days.

**The Chair:** Any speakers to that motion? Seeing none, all those in favour? Those opposed? That motion is carried.

Moving on to the government amendment on page 11.

**Mrs. Sandals:** I move that subsection 306(5) of the act, as set out in section 4 of the bill, be amended by striking out “On and after February 1, 2008” at the beginning.

**The Chair:** Speaking to the motion?

**Mrs. Sandals:** We will be making an amendment later to the coming-into-force date, so there are a number of technical amendments along the way which allow that to make sense.

In this particular case, the clause, as amended, will end up reading: “When a principal suspends a pupil under this section, he or she shall assign the pupil to a program for suspended pupils in accordance with any policies or guidelines issued by the minister.”

**The Chair:** Further speakers?

**Mr. Marchese:** Let me understand: The language says, “On and after February 1, 2008.” What this means is that it takes out that any program can be offered immediately rather than after 2008? Is that the effect of this amendment?

**Mrs. Sandals:** If I may, Chair, we get into the awkward thing that the taking-effect date is the very last clause in the bill, so by the time we get to amending the effective date we’ve done everything else that supports changing the effective date. So if I could perhaps speak to this thing which is going to come much later, then when we get the technical amendments it may make more sense.

As we heard from a number of people, the act as currently structured sees most of the act coming into force on July 1, but the requirement to have alternative programs not coming into force until February. The school boards were very concerned that this was going to create an odd structure, having the bill sort of in force but sort of not in force. It creates a very complicated transitional scheme as well.

The boards were concerned that because between July 1 and September 1 the regulations will have to be approved and promulgated, the policy and guidelines will have to be approved and promulgated, you would have to have all the board policies updated to reflect those new regulations and so forth, and school handbooks reprinted—and something that was going to set up rather a confusing situation in semester one, it would just be cleaner to have the whole thing come into force all at once on February 1. So we will be changing the effective date to February 1. We’ll have the training and implementation period, with the regulations, the policies, the board policies, the training—all those things—taking place in the interim, but the actual effective date will be February 1, and then everything can come into force all together.



So there is a whole bunch of technical amendments that allow us to do that.

1700

**The Chair:** Thank you, Ms. Sandals.

It's 5 o'clock, and I'm ordered to read this:

"That, pursuant to standing order 46 and notwithstanding any other standing order or special order of the House relating to Bill 212, An Act to amend the Education Act in respect of behaviour, discipline and safety, when Bill 212 is next called as a government order the Speaker shall put every question necessary to dispose of the second reading stage of the bill without further debate or amendment and at such time the bill shall be ordered referred to the standing committee on general government; and

"That the standing committee on general government shall be authorized to meet, in addition to its regularly scheduled meeting times, on May 14, 2007, from 10 a.m. to 12 noon and May 16, 2007, from 10 a.m. to 12 noon for the purpose of conducting public hearings on the bill; and

"That the deadline for filing amendments to the bill with the clerk of the committee shall be 12 p.m. on May 23, 2007. No later than 5 p.m. on May 28, 2007, those amendments which have not yet been moved shall be deemed to have been moved, and the Chair of the committee shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill and any amendments thereto. The committee shall be authorized to meet beyond the normal hour of adjournment until completion of clause-by-clause consideration. Any division required shall be deferred until all remaining questions have been put and taken in succession, with one 20-minute waiting period allowed pursuant to standing order 127(a); and

"That the committee shall report the bill to the House not later than May 29, 2007. In the event that the committee fails to report the bill on that day, the bill shall be deemed to be passed by the committee and shall be deemed to be reported to and received by the House; and

"That, upon receiving the report of the standing committee on general government, the Speaker shall put the question for adoption of the report forthwith, and at such time the bill shall be ordered for third reading, which order may be called on that same day; and

"That, on the day the order for third reading of the bill is called, the time available for debate shall be one hour, and the time shall be apportioned equally among the recognized parties; and

"That when the time allotted for debate has expired, the Speaker shall interrupt the proceedings and put every question necessary to dispose of the third reading stage of the bill without further debate or amendment; and

"That there shall be no deferral of any vote allowed pursuant to standing order 28(h); and

"That, in the case of any division relating to any proceedings on the bill, the division bell shall be limited to 10 minutes."

So we can move on to page 11 of your agenda.

**Mr. Klees:** Chair, could you just explain the effect of what you've just read?

**The Chair:** What we will do between now and until we get through these is vote on each of the amendments that are placed before us without debate, based on the orders of the House.

**Mr. Marchese:** You vote for or against whatever motion is being read out. That's it.

**Mr. Klees:** So the implication is that—

**Mr. Marchese:** You guys did it too. It's okay, Frank.

**Mr. Klees:** —on the one hand, they want to talk about democratic reform but don't allow members of the House to debate the issue.

**The Chair:** The instructions are quite clear.

Dealing with the motion on page 11, shall the government amendment on page 11 carry? Those in favour? Those opposed? That motion is carried.

Shall the PC amendment on page 12 carry? Those in favour? Those opposed? That motion is lost.

Shall the PC amendment on page 13 carry? Those in favour? Those opposed? That is lost.

Shall the government amendment on page 14 carry? Those in favour? Those opposed? That is carried.

Page 15, PC amendment: Those in favour? Those opposed? That is not carried.

Page 16, PC motion: Those in favour? Those opposed? That is not carried. It's lost.

Page 17, government amendment: Those in favour? Those opposed? That is carried.

Page 18, government amendment: Those in favour? Those opposed? That is carried.

PC amendment, page 19: Those in favour? Those opposed? That motion is lost.

Page 20, government amendment: Shall that carry? Those opposed? That is carried.

Page 21, PC amendment: Those in favour? Those opposed? That is lost.

Page 22, PC amendment: Those in favour? Those opposed? That is lost.

PC amendment on page 23: Those in favour? Those opposed? That is also lost.

Government motion on page 24: Those in favour? Those opposed? That is carried.

Page 25, PC motion: Those in favour? Those opposed? That is lost.

Page 26, PC motion: Those in favour? Those opposed? That is lost.

PC motion on page 27: Those in favour? Those opposed? That is lost.

Government motion on page 28: Those in favour? Those opposed? That is carried.

**Mr. Klees:** I'd like to ask a question: Is there any chance that any of our amendments might pass between now and the end of this process?

**The Chair:** Ms. Sandals, any comment? You're certainly not compelled to answer, but the question has been asked.

**Mrs. Sandals:** There are ones where you're doing the same thing as we are doing, but I think ours tend to come before yours, so we'll pass ours before you do yours.



**Mr. Klees:** I thought so. So there really is no reason for me to continue.

**Mrs. Sandals:** There are places where in fact we are suggesting the same thing, so our intent is the same.

**Mr. Klees:** Thank you very much. Enjoy.

**The Chair:** Thank you very much. We're with you in spirit.

Moving on to page 29, there's a PC amendment. Those in favour? Those opposed? That motion is lost.

Moving on to page 30, there's a government motion. Those in favour? Those opposed? That is carried.

PC amendment on page 31: Those in favour? Those opposed? That is lost.

Dealing with a couple of amendments out of order, page 33, PC amendment: Those in favour? Those opposed? That is lost.

There's a government amendment now on page 32. Those in favour? Those opposed? That is carried.

PC amendment on page 34: Those in favour? Those opposed? That is lost.

**Mrs. Sandals:** You're getting ahead of Susan.

**The Chair:** I am. That's right. Okay.

Page 35: We have a PC amendment. Those in favour? Those opposed? That is lost.

Page 36: We have a PC amendment. Those in favour? Those opposed? That is lost.

We have a government amendment on page 37. Those in favour? That is carried.

**Mrs. Sandals:** And that goes over several pages before we get to 38.

**The Chair:** Page 38: We have a PC amendment. Those in favour? Those opposed? That is lost.

Page 39: We have another PC amendment. Those in favour? Those opposed? That is lost.

We have a government amendment on page 40. Those in favour? Those opposed? That is carried.

Page 41: We have a government amendment. Those in favour? Those opposed? Carried.

We have a PC amendment on page 42. Those in favour? Those opposed? That is lost.

Page 43: We have a government amendment. Those in favour? Those opposed? That is carried.

Page 44: We have another government amendment. Those in favour? Those opposed? That is also carried.

Shall section 4, as amended, carry? That is carried.

Moving on to section 5, we have a government amendment. We're dealing out of order with these again.

**Mrs. Sandals:** So we're on 46 now?

**The Chair:** Page 46, dealing with a government amendment: Those in favour? Those opposed? That is carried.

Moving on to the PC amendment on page 45, those in favour? Those opposed? That is lost.

Dealing with the government amendment on page 47: Those in favour? That is carried.

Dealing with the PC amendment on page 48: Those in favour? Those opposed? That is lost.

Shall section 5, as amended, carry? That is carried.

Dealing with section 6 now, we've got a PC amendment on page 49. Those in favour? Those opposed? That is lost.

We have a government amendment on page 50. Those in favour? Those opposed? That is carried.

Page 51: We have a government amendment. Those in favour? Those opposed? That is carried.

Page 52: We have a PC amendment. Those in favour? Those opposed? That is lost.

We have a government amendment on page 53. Those in favour? That is also carried.

Moving on now to page 54, we've got a government amendment. Those in favour? Those opposed? That's carried.

Page 55 is another government amendment. Those in favour? Those opposed? That is carried.

Page 56: We have a government amendment. Those in favour? Those opposed? That is carried.

Page 57: A government amendment. Those in favour? Those opposed? That is carried.

Page 58: We have a government amendment. Those in favour? Those opposed? That's carried.

Page 59: We have a government amendment. Those in favour? Those opposed? That is carried.

Shall section 6, as amended, carry? That is carried.

Moving on now to section 7, we have a PC amendment on page 60. Those in favour? Those opposed? That does not carry. Therefore there is no amendment.

Shall section 7 carry? Those in favour? That loses.

Moving on now to section 8, there is a government amendment on page 62. Those in favour? Those opposed? That is carried.

Shall section 8, as amended, carry? That is carried.

Section 9 is the short title. Shall section 9 carry? That is carried.

Shall the title of the bill carry? That's carried.

Shall Bill 212, as amended, carry? That also is carried.

Finally, shall I report the bill, as amended, to the House? Those in favour? Those opposed? That is carried. Thank you very much. We're adjourned.

*The committee adjourned at 1712.*











## CONTENTS

Monday 28 May 2007

<b>Education Amendment Act (Progressive Discipline and School Safety), 2007, Bill 212, <i>Ms. Wynne</i> / <b>Loi de 2007 modifiant la Loi sur l'éducation (discipline progressive et sécurité dans les écoles), projet de loi 212, <i>M<sup>me</sup> Wynne</i></b>.....</b>	G-1191
---	--------

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### Chair / Président

Mr. Kevin Daniel Flynn (Oakville L)

#### Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)

Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)

Mr. Kevin Daniel Flynn (Oakville L)

Mr. Jerry J. Ouellette (Oshawa PC)

Mr. Mario G. Racco (Thornhill L)

Mr. Lou Rinaldi (Northumberland L)

Mr. Peter Tabuns (Toronto–Danforth ND)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### Substitutions / Membres remplaçants

Mr. Frank Klees (Oak Ridges PC)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Khalil Ramal (London–Fanshawe L)

Mrs. Liz Sandals (Guelph–Wellington L)

#### Clerk / Greffière

Ms. Susan Sourial

#### Staff / Personnel

Mr. David Halporn, legislative counsel











3 1761 11467368 4

